

Supreme Court of Florida

No. 67,942

THE FLORIDA BAR RE: AMENDMENT TO
THE BYLAWS UNDER THE INTEGRATION RULE
(FLORIDA CERTIFICATION PLAN)

[April 10, 1986]

PER CURIAM.

The Florida Bar petitions this Court to approve proposed amendments to the Florida Certification Plan, article XIX of the Bylaws of the Florida Bar Integration Rule, to establish Board Certified Real Estate Lawyers.

We approve the proposed amendments, as modified and appended to this opinion. We have eliminated provisions of the proposal permitting an oral examination to be "used in lieu of a written examination in special waiver situations, as determined by the Board [of Certification, Designation and Advertising]." This Court has previously expressed concern about exceptions in the examination provisions of the certification process. The Florida Bar Re Amendment to Integration Rule (Certification Plan), 399 So. 2d 1385 (Fla. 1981). Allowing the Board to exempt applicants from a written demonstration of proficiency without any standards vests the Board with unlimited discretion which could easily subject the program to the criticism of favoring one group of lawyers or of being protectionist. Further, permitting oral examinations in unspecified situations would make this certification scheme for real estate lawyers inconsistent with

certification plans for Board Certified Tax Lawyers, Board Certified Civil Trial Lawyers, Board Certified Estate Planning and Probate Lawyers, and Board Certified Marital and Family Lawyers.

This Court will entertain modification of the mandatory written examination provision. We note that we have previously approved certain specified exemptions to the taking of a written examination. See The Florida Bar Re: Amendment to Integration Rule (Certification Plan), 414 So. 2d 490, 497 (Fla. 1982) (standards for a Board Certified Tax Lawyer).

The proposed amendments, as modified, shall become effective on July 1, 1986, at 12:01 a.m.

It is so ordered.

BOYD, C.J., and OVERTON, McDONALD, EHRLICH, SHAW and BARKETT, JJ.,
Concur
ADKINS, J., Concur in part and dissents in part with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

ADKINS, J., concurring in part and dissenting in part.

I would approve the amendment in the form submitted by
The Florida Bar.

STANDARDS FOR CERTIFICATION OF A
BOARD CERTIFIED REAL ESTATE LAWYER

Lawyers who are members in good standing of The Florida Bar and who meet the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a Board Certified Real Estate Lawyer. The purpose of the standards is to identify those lawyers who practice in the area of real estate and have the special knowledge, skills, and proficiency to be properly identified to the public as certified real estate lawyers.

Section 1. DEFINITIONS.

(a) "Real Estate" is the practice of law dealing with matters relating to real property transactions including, but not limited to, real estate conveyances, title searches, property transfers, leases, condominiums and cooperatives, interval ownership, mortgages, zoning and land use planning, real estate development and financing, real estate litigation, and determination of property rights.

(b) The "practice of law" for this area is defined as set out at Section 5(c)(1) of Article XIX of the Integration Rule Bylaws governing the Florida Certification Plan. 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 spent as a teacher of real estate subjects in an accredited law school.

Section 2. MINIMUM STANDARDS.

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the Bar of any state of the United States or the District of Columbia for a period of five years as of the date of filing an application. The years of law practice need not be consecutive.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement sufficient to show special knowledge, skills, and proficiency in the practice of real estate law during the three years immediately preceding the date of application. Substantial involvement is defined as including devoting at least forty percent of one's practice to matters in which issues of real estate law are significant factors and in which the applicant had substantial and direct participation in those real estate issues. Upon an applicant's request and the recommendation of the Real Estate Certification Committee, the Board may waive the requirement that the three years be "immediately preceding" the date of application if the Board determines the waiver is warranted by special and compelling circumstances. An applicant must furnish information concerning the frequency of his work and the nature of the issues involved. For the purposes of this section the "practice of law" shall be as defined in Section 1(b) except that it shall also include time devoted to lecturing and/or authoring books or articles on fields of real estate law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the Real Estate Certification Committee, but written or oral supplementation may be required.

(c) References for Knowledge and Experience. Every applicant shall submit the names and addresses of five other attorneys or judges who are familiar with his practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for involvement in the field of real estate law. The Board and the Real Estate Certification Committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The Board and the Real Estate Certification Committee may also make such additional inquiries as they deem appropriate.

(d) Education. Every applicant must demonstrate that during the three-year period immediately preceding the date of filing an application, he has accumulated accredited continuing legal education in real property law of not less than 45 hours.

(e) Examination. The applicant must pass a written examination which will be practical, objective, and designed to demonstrate special knowledge, skills, and proficiency in real estate law.

Section 3. RECERTIFICATION. To be eligible for recertification, an applicant must meet the following requirements:

(a) A satisfactory showing, as determined by the Board and the Real Estate Certification Committee, of continuous and substantial involvement in real estate law throughout the period since the last date of certification. The demonstration of substantial involvement of at least forty percent during each year after certification prior to recertification shall be made in accordance with the standards set forth in Section 2(b).

(b) Completion of at least 75 hours of accredited continuing legal education in real estate law since the last date of certification.

(c) An applicant for recertification shall submit the names and addresses of five other attorneys or judges who are familiar with his practice, not including lawyers who currently practice in the applicant's law firm, who can attest to the applicant's reputation for ability of practice and involvement in the field of real estate law. The Board and the Real Estate Certification Committee may also make such additional inquiries as they deem appropriate.

Original Proceeding - Florida Bar Integration Rule Bylaws

Patrick G. Emmanuel, President, Pensacola, Florida; Joseph J. Joseph J. Reiter, President-elect, West Palm Beach, Florida; John F. Harkness, Jr., Executive Director, Tallahassee, Florida; and Stephen A. Rappenecker, Chairman, Board of Certification, Designation and Advertising, Gainesville, Florida,

for The Florida Bar, Petitioner