SECTION 1: INTRODUCTION AND POLICY STATEMENT

1.1 Introduction.
The Ohio State Bar Association Estate Planning, Trust and Probate Law Specialty Certification Program is accredited by the Ohio Supreme Court Commission on Certification of Attorneys as Specialists (CCAS).

This document outlines the Standards by which the OSBA will certify attorneys as specialists in the field of Estate Planning, Trust and Probate law. These Standards will ensure that an attorney Certified under this program possesses an enhanced level of skill and expertise as well as substantial involvement in Estate Planning, Trust and Probate law. These Standards are further designed to foster professional development and expertise and to enable the Association to thoroughly evaluate the credentials of attorneys seeking Certification.

Finally, the ultimate function and most important goal of these standards is to facilitate public access to appropriate legal services.

1.2 Nondiscrimination Statement.
The OSBA Estate Planning, Trust and Probate Law Specialty Certification Program does not discriminate against lawyers seeking Certification on the basis of race, color, national origin, religion, gender, sexual orientation, disability or age. Experience requirements for lawyers seeking Certification that may have an effect on a particular age group are reasonable.

1.3 Organization Statement.
The OSBA, founded in 1880, is a voluntary professional association open to any person who has been admitted to the practice of law, law school students and legal assistants sponsored by an OSBA member.

From the date of its founding until today, the Association’s working goals have been to:

• advance the science of jurisprudence;
• promote improvement of the law and administration of justice;
• uphold integrity, honor and courtesy in the legal profession and encourage and enforce adherence to high standards of professional conduct;
• take positions on matters of public interest as deemed advisable;
• encourage thorough legal education;
• cultivate cordial relations among members of the Bar; and
• perpetuate the history of the profession and the Association.

SECTION 2: DEFINITIONS

2.1 As used in these Standards:

(A) “Applicant” -- An attorney applying to be certified as a specialist under these Standards.

(B) “Application Form” -- The form created and/or approved by the Association, the Specialization Committee and/or the Specialty Board, as may be applicable, that is used to apply for certification under these Standards.
SECTION 3: AUTHORITY

3.1 The authority to grant, revoke, or re-grant certification in the Specialty Field is vested in the Association and as also may be delegated to the Specialization Committee, and to the Section and its Specialty Board.

3.2 No provision contained herein shall in any way limit the right of an attorney certified as specializing in the specialty field to practice law in any other field or to act as counsel in any other type of legal matter.

3.3 Further, no attorney shall be required to be certified as specializing in the Specialty Field before he or she can practice law in such field of law or act as counsel in any particular type of Estate Planning, Trust and Probate Law matter.

3.4 The Association, the Specialization Committee, the Section, and the Specialty Board will apply the Standards without discriminating against lawyers seeking certification on the basis of race, color, national origin, religion, gender, sexual orientation, disability, or age.
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SECTION 4: CREATION OF THE SPECIALTY BOARD

4.1 There is created a Specialty Board attached to the Section. The purpose of the Specialty Board is, with the staff and financial assistance of the Association, to oversee the administration of the Standards.

4.2 The Specialty Board shall be composed of between eight (8) and twelve (12) members appointed by the Association President upon the recommendation of the Section Chair. The exact number shall be determined by the Specialty Board and will contain not less than five (5) members who are certified in the Specialty Field and shall serve for four (4) years or until their successors are appointed. No person shall be appointed for more than two (2) consecutive, four-year terms. At least one member of the Specialty Board designated by its chair shall also serve on the Specialization Committee. With respect to the members of a newly formed Specialty Board, such members must be lawyers who practice substantially in the Specialty Field and their terms shall be staggered to promote continuity. The Specialty Board shall set forth specific criteria for eligibility of a former Specialty Board member to sit for the written examination. These criteria shall be in compliance with the Commission Standards. The Section shall promptly notify the Specialization Committee (or its designated staff person) that the Section has decided to apply for the creation of a Specialty Board. The chair of the Specialization Committee shall then appoint a member of the Specialization Committee and an Association staff member to assist the Section in the drafting of its application and its Standards of Specialization.

4.3 All Specialty Board members serve on a volunteer basis, without pay, and are not considered to be employees of the Association, the Specialization Committee, or the Specialty Board.

4.4 A member of the Specialty Board does not have to be a member of the Section or of any other committee or section of the Association, but must be an OSBA member.

4.5 A member of the Specialty Board may be removed during his or her term by a two-thirds affirmative vote of the other members of the Specialty Board for just cause, such as neglect of duty. A Specialty Board member is entitled to a hearing before the Specialty Board prior to his or her removal, and an appeal may be taken within sixty (60) days after any such removal to the Specialization Committee or any sub-committee thereof convened for such purposes.

4.6 The Specialty Board shall determine its own meeting and related schedules and its own internal procedures.

SECTION 5: CERTIFICATION REQUIREMENTS

An applicant for certification as a specialist in the Specialty Field must be an attorney licensed to practice law in the State of Ohio. The applicant must be in good standing and, in addition, must meet the following mandatory requirements as of the date of the filing of the application:
5.1 **Substantial Involvement.**
The Applicant seeking certification shall be required to make a satisfactory showing of experience through substantial involvement in the specialty area during the five-year period immediately preceding application to the Specialty Board. Substantial involvement includes, but is not limited to, the type and number of cases or matters handled and the amount of time spent practicing in the specialty area. The applicant must aver as part of the application form that he or she has engaged in a minimum of 520 hours per year in the practice of law in the Specialty Field in each of the most recent five (5) year calendar period preceding the application for specialist certification and, has a minimum of 5,000 lifetime hours of practice in the Specialty Field.

5.2 **Peer Review/Recommendations.**
The applicant seeking certification shall submit the names of seven (7) individual references, none of which may be related to or associated with the applicant in the practice of law by way of partnership or any similar professional association. The OSBA will then forward the appropriate recommendation forms to the seven (7) references. A minimum of five (5) completed reference forms must be returned to the association for the application to be considered complete. If more than five (5) references are returned to the association, the board may consider all of the references completed and returned. Persons recommending applicants for specialty certification must themselves demonstrate a familiarity with the competence of the applicant in the field. References must come from sitting judges, magistrates, administrative judges, arbitrators, attorneys already certified as specialists in the field or from an attorney who meets the “substantial involvement” criteria in the field.

5.3 **Written Examination.**
The applicant must pass a written examination of suitable length and complexity. The examination shall test the knowledge and skills of the substantive and procedural law in the specialty area, and include professional responsibility and ethics as it relates to the particular specialty area. The areas of inquiry will include, but are not necessarily limited to:

1. Estate Planning
2. Ohio Trust, Estate and Guardianship Administration
3. Taxes
4. Professional Responsibility

The examination will be prepared and graded under the authority of an independent testing service selected by and retained by the Association, in consultation with an independent third party, not a member of the Specialty Board or any of the Association’s committees or sections, who has a background in academia. The Specialty Board has designated Gerald V. Barrett, Ph.D., J.D. as its initial third party consultant under this section. Further details as to the time, place, pass/fail rate and related examination issues are to be determined by the Specialty Board in conjunction with the Association, subject only to possible review and/or approval of the Specialization Committee.

5.4 **Continuing Legal Education.** The Applicant seeking certification shall be required to complete a minimum of forty-five (45) hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer’s application for certification and thereafter twelve (12) hours every two (2) years of certification. Courses/seminars must meet the requirements of Rule X, of the Supreme Court Rules of the Government of the Bar of Ohio. Applicants must include a copy of their continuing legal education (CLE) transcript with their application for certification and must
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include proof of attendance of all courses not listed on the transcript. CLE hours in the field do not include credit for attendance at seminars promoted as “basic” or “introductory” in nature, but would include speaking at such seminars. Pre-approval of CLE courses/seminars shall be determined by a sub-committee of the Specialty Board. The criteria for approval should be set by the specialization committee and adhered to by the sub-committee. Applicant is encouraged to seek pre-approval of any seminars sought to satisfy the CLE requirements.

To measure whether past or future CLE is sufficiently related to the estate planning, trust & probate specialty to satisfy the requirements, the CLE sponsor must supply the requisite information to the Ohio State Bar Association (OSBA), which it will then forward the information to the Specialty Board for review.

a) The CLE sponsor will provide the OSBA with an outline and materials of the program and brief statement describing the way in which the program will be sufficiently related to the estate planning, trust & probate specialty. The Board may request additional information from the CLE sponsor.

b) Upon approval by the Board, the OSBA will provide the sponsor with a letter granting approval and certificates of attendance for attorneys who attend the program and seek credit towards certification.

c) The sponsor may then announce and advertise that the program was “Approved by Estate Planning, Trust & Probate Law Specialty Certification Board as Appropriate for Credit toward the CLE Requirement.”

d) To measure whether CLE credit for teaching or writing qualifies as sufficiently related to the estate planning, trust & probate specialty to satisfy the requirements, the lawyer seeking certification will provide the Board with documents reflecting that activity and a brief statement describing the way in which the activity is sufficiently related to the estate planning, trust & probate specialty.

5.5 Certificates of Good Standing & Liability Coverage: The applicant seeking certification shall furnish satisfactory evidence that:

a. The lawyer is active and in good standing pursuant to Gov. R. VI of the Supreme Court of Ohio, and the lawyer’s fitness to practice is not in question by virtue of disciplinary action in Ohio or in another state;

b. Coverage by professional liability insurance continually maintained through a reputable company in an amount not less than Five Hundred Thousand Dollars ($500,000) per loss;

c. The lawyer has demonstrated the ability to pay all claims that fall within the deductible amount selected by the attorney under the insurance policy.
Professional liability insurance will not be required of those lawyers who can demonstrate to the OSBA’s satisfaction that the lawyer’s practice relationship with the lawyer’s clients will fully cover any professional liability claim made against the lawyer in an amount not less than five hundred thousand dollars ($500,000) per loss.

The lawyer shall notify the OSBA immediately of any cancellation or change in coverage.

5.6 **Disciplinary Action:**

a. Applicants for certification or recertification shall furnish satisfactory evidence of their good standing with the Ohio Supreme Court.

b. When filing an initial application or application for recertification, the applicant shall disclose to the appropriate Ohio State Bar Association Specialty Board any disciplinary action taken against the applicant by the Supreme Court of Ohio, any federal or state administrative agency, or other agencies of competent jurisdiction.

- The applicant shall disclose to the Ohio State Bar Association Specialty Board any pending or prior malpractice complaint, judgment, settlement or admission of malpractice. Each matter involving a civil suit must contain a copy of the complaint, answer and final judgment entry. Each settlement or admission of malpractice must contain a description of the underlying claim of malpractice and how the claim was resolved.

- The applicant shall disclose to the Ohio State Bar Association Specialty Board any felony conviction that arose after the date the attorney was admitted to the practice of law. Applicant must provide a copy of the indictment or bill of information, order of conviction and sentence.

Failure to disclose such information is a material misrepresentation and may cause rejection or decertification.

c. Applicant need not disclose disciplinary complaints or matters that were closed or dismissed without discipline.

d. If an attorney is disciplined by the Supreme Court of Ohio; any federal or state administrative agency, other agencies of competent jurisdiction or is deemed no longer in “good standing” with the Supreme Court of Ohio during any time during which they are certified, the certified specialist has a period of sixty (60) days from the date the action is taken by the Supreme Court of Ohio to disclose this information to the OSBA Specialty Board.

e. Failure to maintain good standing with the Supreme Court of Ohio shall result in
SECTION 6: RECONSIDERATION

6.1 Any Applicant denied Certification may request reconsideration of the Specialty Board’s decision within thirty (30) days of denial, and then an appeal of the denial may be taken to the Specialization Committee according to the procedures contained in the “Procedures for Specialty Boards organized by OSBA Committees,” or any subcommittee convened for such purposes.

SECTION 7: DUTY TO SUBMIT ANNUAL REPORT, ANNUAL FEES

7.1 Any attorney certified under the Standards must, in order to maintain his or her certification, annually report that there have been no material changes in the information submitted in the attorney’s application for certification. If there have been material changes, the changes must be detailed in full. Further, the certified attorney must show that, in addition to the requirements of Rule X, he or she has completed twelve (12) hours every two (2) years of certification, with continuing education hours meeting the criteria set forth in Section 5.4 herein. Affidavits or forms are due to be filed with the Specialty Board, or the Association as may be later determined, between November 1 and December 1 of each year that an attorney is certified under these Standards. Annual reports must be accompanied by annual fees as established by the fee schedule of the OSBA, Section 10 hereof. The Specialty Board, by an affirmative vote of the majority of its members, may decertify an attorney previously certified under the Standards if material changes reported on the affidavit or form, or that may otherwise come to the Specialty Board’s attention, are such that the attorney involved would no longer be qualified for certification or recertification under the standards. Any attorney may be decertified if the annual fee is not paid. Any decertified attorney may request reconsideration and, if denied, appeal the decertification pursuant to the procedures outlined by the OSBA Specialization Committee or any such subcommittee thereof convened for such purposes.

7.2 Upon any later reinstatement of the license to practice law in the State of Ohio, such reinstated attorney would be eligible to reapply for certification under the Standards.

SECTION 8: CERTIFICATION PERIOD AND RE-CERTIFICATION

8.1 The certification period under these Standards is a period of five years.

8.2 Time for recertification:

In the calendar year preceding the expiration date of an attorneys certification under these standards, hereinafter referred to as “the calendar year”, an attorney certified under the standards must apply for recertification under the same criteria as set forth in Section 5 hereof, with the exception of sub-section 5.3 (written examination) and provided that the CLE criteria shall be as set forth in Section 7 hereof. Applications for recertification shall be postmarked by October 1 of the calendar year. Applications postmarked after October 1 of the calendar year will be assessed a $100 late fee, and the applicant’s name may not appear in subsequent press releases containing lists of certified specialists. If a full and complete application is not postmarked by December 31 of the calendar year, the applicant shall be decertified, and must apply for recertification under the same criteria as set forth in Section 5 hereof including the written
SECTION 9: ADOPTION AND AMENDMENT

9.1 These Standards are effective upon the approval thereof by the Association’s Board of Governors and the Supreme Court Commission.

9.2 The power to amend these Standards is vested in the Section and its Specialty Board, subject only to review and/or approval by the Specialization Committee, the Association’s Board of Governors, and/or the Commission.

9.3 The Standards further incorporate any further rules or regulations that the Commission may later issue as to the creation of a specialty plan or a specialty board. Any language in these Standards that is contrary to any provisions of any Commission future rules or regulations is deemed to be null and void and is to be replaced by such contrary language, subject only to the Section’s decision to withdraw its Plan of Specialization.

SECTION 10: FEES

10.1 Application fee: Applicant must submit a one-time non-refundable application fee:
   OSBA Member: $250
   Non-Member: $300

10.2 Exam fee: Applicants must pay a non-refundable exam fee each time the exam is administered:
   OSBA Members/Non-Members: $225

10.3 Annual Reporting fee: Applicants must pay a non-refundable annual reporting fee each year of certification:
   OSBA Member: $125
   Non-Member: $150

10.4 Re-certification fee: Applicants must pay a non-refundable re-certification fee:
   OSBA Members/Non-Members: $200

SECTION 11: APPEALS PROCEDURE

11.1 Notice of Action. An applicant who is denied certification, or a specialist who is denied recertification, will be notified by registered or certified mail sent to the lawyer's last known address of the OSBA Specialty Board's ("Board") decision ("Notice"). The reasons for the Board's action shall be set forth in that Notice. The Notice shall advise the lawyer that he or she may file, within 30 days of the receipt of the Notice, a Request for Reconsideration of the Board’s decision.
11.2 **Reconsideration.** The Request for Reconsideration shall include any additional information or supporting material that the lawyer believes will help the Board in its reconsideration of the initial decision. The Board’s decision shall be reconsidered by the entire Board or a committee of the Board appointed by the chairperson.

The Board shall send the reconsideration decision in writing to the applicant or specialist by registered or certified mail within 45 days of the receipt of the Request for Reconsideration setting forth the reasons for the decision. The Board shall notify the applicant or specialist that he or she may, within 30 days of the receipt of the decision on Reconsideration, appeal in writing to an Independent Review Panel.

11.3 **Independent Review Panel.** If a request by an applicant or a specialist is made for an appeal to an Independent Review Panel, the chair of the OSBA Specialization Committee shall appoint a three-person Independent Review Panel. The Independent Review Panel shall include at least two persons whose practice is primarily in the same specialty area. When the subject of the appeals relates to a matter of substantive law, the entire Independent Review Panel shall be comprised of persons whose practice is primarily in the same specialty area. No member of the Review Panel shall have had previous involvement in considering the applicant's or specialist's applications.

11.4 **Hearing.** The hearing before the Independent Review Panel will be *de novo*. The Board may send a representative to the Independent Review Panel hearing. The Independent Review Panel may consider any relevant evidence, including hearsay, if it is the type of evidence upon which reasonable persons rely, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. The Independent Review Panel may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

The Independent Review Panel shall report its findings, and decision to the Board. The Board shall notify the applicant or specialist of that decision by registered or certified mail sent to the lawyer's last known address.

The decision of the Independent Review Panel shall be final.