

INDIANA STATE BAR ASSOCIATION

TRUST & ESTATE SPECIALTY BOARD

PLAN FOR

TRUST & ESTATE PRACTICE SPECIALTY CERTIFICATION

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PART 1

PRINCIPLES

ARTICLE 1.1

INTRODUCTION

- 1.1.1. Continuation and Restatement of Prior Plan. This is an amendment and restatement of The Indiana State Bar Association Probate, Trust and Real Property Section Practice Specialty Certification Plan for Estate Planning and Administration. It has been authorized by the Probate, Trust and Real Property Section of the Indiana State Bar Association and shall become effective upon its approval by the Indiana Commission for Continuing Legal Education.
- 1.1.2. Purpose. The purpose of certifying expert Trust & Estate Law practitioners is to promote excellent practice among these practitioners who serve Indiana Clients or Non-Indiana Clients in respect of Indiana Matters. Expert attorneys exceed basic competence and demonstrate extraordinary, practical knowledge and skill. Certification as a Board Certified Indiana Trust & Estate Lawyer is an inspirational goal for experienced attorneys. The intent of the certifying process is to fairly test an attorney's ability to display special knowledge, skills, and proficiency in Trust & Estate Law, both generally and in respect of Indiana Trust & Estate Matters.

ARTICLE 1.2

DEFINITIONS

- 1.2.1. "Applicant(s)" refers to both certification and recertification applicant(s), unless otherwise specifically stated.
- 1.2.2. "Board Certified Indiana Trust & Estate Lawyer" may be represented by the "BCITEL" acronym, both of which refer to a lawyer who has satisfied all of the requirements of this plan and has received certification either as a "Certified Estate Planning and Administration Specialist" under the predecessor to this plan by the organization formerly known as the Indiana State Bar Association's Estate Planning and Administration Specialty Certification Board (now the "Trust & Estate Specialty Board") or as a "Board Certified Indiana Trust & Estate Lawyer" by the organization now known as the "Trust & Estate Specialty Board," which may be represented by the "TESB" acronym.
- 1.2.3. "Certificate of Special Competence" means a record issued by the TESB confirming that an attorney has been certified or recertified, as the case may be, under this Plan as a specialist in Indiana Trust & Estate Law.

- 1.24. "Commission" refers to the Indiana Commission for CLE.
- 1.25. "CLE" refers to continuing legal education.
- 1.26. "General Requirements" refers to the first part of the Standards in ARTICLE 3.2 below.
- 1.27. "Indiana Clients" include the following: (i) clients who are or who plan to become residents of Indiana; (ii) clients who once were residents of Indiana and still have business interests or property in Indiana; (iii) clients who do business and have a business location in Indiana; (iv) clients who are personal representatives of Indiana estates, in their capacities as such personal representatives; (v) clients who are guardians of Indiana residents, in their capacities as such guardians; and (vi) clients who are trustees of Indiana trusts, in their capacities as such trustees.
- 1.28. "Indiana Matters" refer to matters pending before Indiana courts or administrative agencies or primarily involving the interpretation or application of Indiana statutory or common law.
- 1.29. "Indiana Trust & Estate Matters" include (i) Indiana decedents' estates; (ii) Indiana guardianships; (iii) Indiana trusts; and (iv) reporting or payment of, or controversies regarding, Indiana death taxes or fiduciary income taxes;.
- 1.2.10. "Indiana Trust & Estate Law" refers to the practice of Trust & Estate Law for Indiana Clients, or for Non-Indiana Clients in respect of Indiana Trust & Estate Matters.
- 1.2.11. "Non-Indiana Clients" are clients who are not Indiana Clients.
- 1.2.12. "Plan" refers to the Indiana Plan for Recognition and Regulation of Specialization in the Law.
- 1.2.13. "PTRP" refers to the Probate, Trust & Real Property Section of the Indiana State Bar Association.
- 1.2.14. "Related Areas" refers to accredited CLE in any of the following areas: Corporate/partnership law, including entity selection, creation, governance, taxation and succession planning; Elder law; Divorce law, including prenuptial and postnuptial agreements; Nonprofit law, including formation, governance, administration, dissolution and taxation; and Litigation practice and procedure. *(Amended 05/06/2022)*
- 1.2.15. "Rules" refers to the Rules and Regulations of the TESB.
- 1.2.16. "SBOI" refers to the State Bar of Indiana, which means attorneys practicing law under the authority of the Indiana Supreme Court, but which does not mean the Indiana State Bar Association or any other organization.
- 1.2.17. "Special Competence" refers to an attorney's proficiency in the Trust & Estate

- Law area, both generally and in respect of Indiana Trust & Estate Matters, as evidenced by such attorney's mastery of those skills and the specific knowledge noted in 1.5.1 and 1.5.2 herein.
- 1.218. "Specialty Areas" refers to the list of practice areas set forth in 1.5.2 herein. *(Amended 05/06/2022)*
- 1.219. "Specific Area Requirements" refers to Section 3.2.2.2 of the Standards, which includes the substantial involvement and Special Competence requirements for the Trust & Estate Law area, both generally and in respect of Indiana Trust & Estate Matters, which are distinguishable from the more general requirements such as admission to practice law in the State of Indiana. *(Amended 05/06/2022)*
- 1.220. "Standards" refers to the Standards for Attorney Certification. The Standards are composed of both the General Requirements and the Specific Area Requirements.
- 1.221. "TESB" refers to the Trust & Estate Specialty Board (previously known as the Estate Planning and Administration Specialty Certification Board or "EPASCB").
- 1.222. "Trust & Estate Law" refers to the practice of law dealing with the analysis, planning and recommendations for the conservation and disposition of clients' assets in accordance with the clients' expressed desires, including tax effects and other consequences; the drafting and preparation of legal instruments to effectuate the clients' estate plans, *e.g.*, wills, trusts and other legal documents; and the administration of estates, guardianships and trusts.
- 1.223. "Elder Law" refers to the practice of law serving the needs of older adults and persons with disability as to Trust and Estate Law, as well as issues related to health care, long-term care planning, guardianship, retirement, Social Security, Medicare/Medicaid and other important matters for older adults and disabled persons.

ARTICLE 1.3

PERFORMANCE EVALUATION PHILOSOPHY

The examination process should fulfill the certification purpose of distinguishing expert Trust & Estate Law practitioners. Therefore, no passing score or rate is prescribed, but a statistical model will identify qualified experts. Although all candidates could become certified, probability indicates that the high scorers will be noticeably separate from the rest of each candidate pool. The statistical model should allow for bias variations in the examination design and administration process better than more static evaluation criteria. The TESB shall take appropriate means to protect the security of all examinations.

ARTICLE 1.4

EXAMINATION FORMAT

The examination may consist of multiple choice, essay questions, short answer questions, True-False and different technologies. The questions should measure basic knowledge that every Indiana Trust & Estate Law practitioner should possess. The essay questions should demonstrate an expert attorney's ability to harness knowledge and experience for effective, practical project resolution. The examination shall include questions about the law in Indiana. The examination shall not exceed 8 hours. At least one-third of the examination shall consist of tax related items including, but not limited to, those listed in 1.5.2.8, 1.5.2.9, 1.5.2.10 and 1.5.2.11. Some portions of the examination shall include ethics as it relates to Trust & Estate Law practice.

ARTICLE 1.5

EXAMINATION QUESTION DRAFTING

1.5.1. Examinations should measure general knowledge and skills as follows:

1.5.1.1. Knowledge

- 1.5.1.1.1. Specific identification and general application of statutes, regulations and other authorities that pertain to the Trust & Estate Law area, both generally and in respect of Indiana Trust & Estate Matters;
- 1.5.1.1.2. Identification and definition of the jurisdiction and authority of the courts, administrative agencies and adjudicative bodies that take cognizance over regulations and laws that pertain in the Trust & Estate Law area, both generally and in respect of Indiana Trust & Estate Matters;
- 1.5.1.1.3. Familiarity with the rules of the courts and administrative agencies before which the candidate practices his/her specialty;
- 1.5.1.1.4. Identification and articulation of the holdings of the leading cases in the Trust & Estate Law area, both generally and in respect of Indiana Trust & Estate Matters;
- 1.5.1.1.5. Identification and articulation of the trends in the law, based on recent and current legislation, case law and legal scholarship.

1.5.1.2. Skills

- 1.5.1.2.1. Ability to communicate effectively to a variety of audiences

(e.g., communications addressed to clients, counsel, courts, administrative agencies, etc.);

- 1.5.1.2.2. Ability to develop and evaluate strategies for solving a problem or accomplishing an objective;
- 1.5.1.2.3. Ability to analyze and apply legal rules and principles;
- 1.5.1.2.4. Ability to analyze, sort and use facts and to plan and direct factual investigations;
- 1.5.1.2.5. Ability to organize and manage a legal task efficiently and within time constraints;
- 1.5.1.2.6. Ability to represent a client consistent with applicable ethical standards;
- 1.5.1.2.7. Ability to invoke and utilize the procedures normally required in the Trust & Estate Law area, both generally and in respect of Indiana Trust & Estate Matters, including pleadings and filings.

1.5.2. Examinations should measure specific knowledge and skills which may include the following Specialty Areas (*Amended 05/06/2022*):

- 1.5.2.1. Estates in Land and Intangible and Tangible Personal Property
- 1.5.2.2. Formalities of Wills
- 1.5.2.3. Intestate Succession
- 1.5.2.4. Gifts
- 1.5.2.5. Life Insurance and Annuities
- 1.5.2.6. Trusts (including the Indiana Trust Code, Prudent Investor Act, Uniform Custodial Trust Act, and Principal and Income Act)
- 1.5.2.7. Original and Ancillary Probate and Administrative Procedures, including Guardianships
- 1.5.2.8. Elections (State Law and Tax Elections)
- 1.5.2.9. Income Taxation of Estates, Trusts and Beneficiaries
- 1.5.2.10. Estate, Gift, Generation Skipping Transfer Taxes, Inheritance Taxes, and related topics (including, without limitation, the marital deduction, transfers during life, powers of appointment, life insurance, annuities, jointly owned property, the charitable deduction, special use valuation, extended payments, the use of disclaimers in estate planning, and basics of generation-skipping transfer taxes)

- 1.5.2.11. The Income Tax Basis of Property Acquired by Gift or From a Decedent
- 1.5.2.12. Rules of Professional Conduct
- 1.5.2.13. Non-Probate Assets (e.g., multiple party accounts, retirement/IRA accounts, TOD/POD accounts and jointly held property)
- 1.5.2.14. Uniform Transfers to Minors Act
- 1.5.2.15. Estate, Trust and Guardianship Litigation Matters
- 1.5.2.16. Documents for Incapacity Planning and Guardianship

The above shall serve as a guideline list for self-study.

- 1.5.3. The drafters of the examination should be recognized expert practitioners. Drafters may not sit for an examination for a period of 3 years after they have served as a draftsman for the examination.
- 1.5.4. The Standards for certification and the examination specifications in the Trust & Estate Law area, both generally and in respect of Indiana Trust & Estate Matters, should work in tandem. The examination specifications serve both to advise Applicants what will be covered on the examination and to provide a blueprint for the drafters on what the examination should contain. A psychometrist may assist the drafters in drafting the examination to give the drafters information on drafting both essay and multiple choice questions. The drafters will prepare model answers with each question. Drafters will also prepare a written guideline to use in grading each essay question. The TESB may designate expert practitioners to review proposed questions for clarity, style, etc. They will work with the drafters in finalizing the questions and will be subject to the same limitations as drafters as prescribed in 1.5.3.
- 1.5.5. The examination will be pretested for reliability by a committee selected by the TESB composed of a pool of practitioners in the area as the psychometrist may recommend. A competent psychometrist may be engaged to evaluate the examination and propose adjustments to improve its effectiveness. These expert practitioners will be subject to the same limitations as drafters as prescribed in 1.5.3.
- 1.5.6. All persons having access to the examination before it is administered will be required to agree to maintain its confidentiality and will sign a confidentiality and non-disclosure agreement regarding the test questions. Access to the examination will be limited as directed by the TESB. (*Amended 01/17 2017*)

ARTICLE 1.6

EXAMINATION ADMINISTRATION AND EVALUATION

161. The first 2 or 3 examinations may be given annually to accommodate the large pools of candidates that may seek certification initially. Thereafter, the examination could be administered less frequently because demand may be insufficient to establish a statistically sound candidate pool.
162. After the scores are tabulated, the TESB will prepare a distribution chart. The graders will read the distribution chart and recommend a passing score to the TESB. This recommendation will be based on the difficulty of the examination and whether there is a clear "break point" between the high performing candidates and the lower performing candidates.
163. A psychometrist may evaluate the examination results and propose modifications to the examination and the examination process.

PART 2

TRUST & ESTATE SPECIALTY BOARD

ARTICLE 2.1

BOARD ESTABLISHMENT

The Trust & Estate Specialty Board (herein referred to as the “TESB”) was established in 2006 and previously was known as the Estate Planning and Administration Specialty Certification Board.

- 21.1. Members of the TESP shall be Board Certified Indiana Trust & Estate Lawyers, shall be elected by the TESP and shall hold office for terms of two years, or until their successors are elected, unless they sooner die, become incapacitated, resign or are removed. Their terms shall be staggered, with elections held annually, so that seven are elected at one year’s annual meeting and six are elected at the following year’s annual meeting. A member who has served two consecutive two-year terms shall not be eligible for election until at least one year shall have elapsed. Vacancies may be filled by majority vote of the remaining members. The term of any member thus elected shall expire at the end of the unexpired term of the member he or she is replacing or, in the case of a vacancy caused by an increase in the size of the board, at the next annual meeting of the board. *(Amended 01/172017)*
- 21.2. All members of the TESP serve at the discretion of the TESP and may be removed, without cause, by a simple majority vote of the members of the TESP.
- 21.3. The TESP shall have two Co-Chairpersons whose terms expire in different years. At each annual meeting, following the election of members for new two-year terms, the TESP shall elect one of such newly-elected or newly-reelected members as a Co-Chairperson to hold office until the end of the two-year term for which he or she was elected or reelected as a board member.

ARTICLE 2.2

AUTHORITY OF THE BOARD

Subject to the continuing jurisdiction of the Supreme Court of Indiana and its Commission on Continuing Legal Education, the TESP shall have general authority over all matters pertaining to certification of Trust & Estate Law specialization and shall have the authority and duty to:

- 22.1. Administer the program for the recognition and regulation of Trust & Estate Law specialization. The TESP shall promptly notify Applicants who have been

- approved for specialty certification or recertification.
222. Continue to define and designate areas of law in which Certificates of Special Competence in Trust & Estate Law specialization may be granted and provide procedures by which such areas may be determined, redefined or eliminated.
 223. Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting Certificates of Special Competence to attorneys in Trust & Estate Law specialization.
 224. Provide procedures for the application, investigation and testing of the qualifications of Applicants and certificate holders and to award Certificates of Special Competence in a form approved by the TESB.
 225. Make and publish reasonable and nondiscriminatory standards for testing, continuing proficiency, recertification or renewal of Certificates of Special Competence, including among other things, limiting the number of Applicants sitting for the examination at any one time.
 226. Encourage law schools, bar associations and other agencies and organizations to develop and maintain a program of legal education and continuing legal education to meet the standards prescribed by the TESB.
 227. Cooperate with the Indiana State Bar Association and the Indiana Supreme Court and its affiliated agencies in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of Trust & Estate Law specialization in the manner determined by the TESB.
 228. Coordinate with the Standing Committee on Specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization.
 229. Make and publish standards, rules, policies and regulations to implement this authority, all in accordance with the limitations on the power of the TESB and the minimum standards prescribed by the TESB.

ARTICLE 2.3

LIMITATIONS ON AUTHORITY OF THE BOARD

The following limitations on the power of the TESB are established:

231. No standards shall be approved which shall in any way limit the right of a certificate holder to practice law in all areas. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though he or she is board certified in a particular area of law.

232. No attorney shall be required to be certified before he or she can practice law in any particular area of the law. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though he or she is not board certified in any particular area.
233. All requirements for and all benefits to be derived from certification granted by the TESB are individual and may not be fulfilled by or attributed to a law firm of which the certified attorney may be a member.
234. Participation in the Plan shall be on an entirely voluntary basis.
235. The limit on the number of areas of law in which an attorney may be certified shall be determined by such practical limits as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the TESB.
236. No rules or standards shall be adopted in contravention of the rules of the Indiana Supreme Court or its commissions and agencies.
237. The TESB shall not discriminate against attorneys seeking certification or recertification on the basis of race, religion, gender, sexual orientation, disability or age.

ARTICLE 2.4

ADVISORY COMMITTEES

Advisory Committees to the TESB may be established by the TESB for Trust & Estate Law specialization. These committees shall advise and assist the TESB in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in Trust & Estate Law. Standards for this specialty area shall be established by the TESB, but it may be advised in this and other relevant matters by an Advisory Committee. Advisory Committee members shall be appointed by the TESB in such number and for such terms as the TESB shall direct.

PART 3

**STANDARDS FOR ATTORNEY CERTIFICATION, FOR DENIAL
OR REVOCATION OF CERTIFICATION, AND FOR APPEAL**

ARTICLE 3.1

ELIGIBILITY

To be certified as a Board Certified Indiana Trust & Estate Lawyer, an attorney must fulfill both the General Requirements and Specific Area Requirements.

ARTICLE 3.2

GENERAL REQUIREMENTS

3.2.1. **PREFACE.** Pursuant to the authority vested in the TESB, the TESB prescribes the following requirements for certification:

3.2.2. **GENERAL REQUIREMENTS**

3.2.2.1. **State Bar Admission.**

All Applicants and certified attorneys must be active members in good standing of the SBOI. Memberships in the TESB or the Indiana State Bar Association are not required for certification.

3.2.2.2. **Indiana Practice.**

32221. **Certification Applicants.** For the 3 years immediately preceding application, a certification Applicant must have provided legal advice and services to Indiana Clients, or to Non-Indiana Clients in respect of Indiana Matters, an average of at least 3 days per week. Failure to meet this requirement will result in denial of application.

32222. **TESB Certified Attorneys.** All board certified attorneys must continue to meet the substantial involvement and special competence requirements pertinent to Trust & Estate Law and Indiana Trust & Estate Law and provide legal advice and services to Indiana Clients, or to Non-Indiana Clients in respect of Indiana Matters, an average of at least 3 days per week.

32223. **Forms.** Documents, applications, questionnaires, and examinations involved in the certification process shall be approved by the TESB.
32224. **Fees.** Applicants and certified attorneys shall timely pay the fees as established by the TESB.
32225. **Expiration of Certification.** Certification shall be for a period of 5 years at the end of which time recertification shall be permitted upon the terms and conditions established by the TESB.
32226. **Revocation of Certification.** A Certificate of Special Competence issued by the TESB may be revoked for good cause as determined by the TESB. A certified attorney must promptly report to the TESB his or her disbarment or suspension from the practice of law in any jurisdiction.
32227. **Failure to Furnish Information: Misrepresentation.** Certification may be denied, revoked, or other appropriate action taken because of an Applicant's or certified attorney's failure to furnish the requested information or because of his or her misrepresentation of any material fact provided to the TESB.
32228. **Required Period of Law Practice.** Applicants for certification shall have been engaged in the practice of law for a period of at least 7 years. "Practice of law" means legal work done primarily for the purpose of legal advice or representation. Service, after admission to the bar of any state or the District of Columbia, as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Practice of law includes law teaching or legal editorial duty which is legal in nature although not the practice of law. Practice must be at least an average of 650 billable or pro bono hours per year, including at least 1,000 billable or pro bono hours during the two-year period prior to certification.
(Amended 10/01/2016)

32229. **Examination.** Certification Applicants must pass a written examination applied uniformly to all Applicants sitting for that examination and must demonstrate sufficient knowledge, proficiency and expertise in Trust & Estate Law to justify the representation of special competence to the legal profession and to the public. After a certification Applicant has taken and failed an examination 3 times in this specialty area, the Applicant is ineligible to apply for the next 3 calendar years. *(Amended 01/17/2017)*

3.2.3. CHARACTER AND REPUTATION

3.2.3.1. Disciplinary Review.

32311. Applicants and certified attorneys shall furnish satisfactory evidence of their good character and reputation and shall sign a release form allowing the TESB to receive from the Indiana Supreme Court Disciplinary Commission a complete history of that attorney's records with that Commission. They shall also furnish a list of all other jurisdictions in which they are licensed to practice law, together with a document allowing the TESB to receive the information from the governing body for disciplining attorneys in each such jurisdiction. They shall also furnish a statement as to whether they are then subject to an investigation, complaint, inquiry or other disciplinary proceedings by any other judicial or administrative body and such further information as may be requested by the TESB. Applicants and certified attorneys shall submit the details of such investigation, complaint, inquiry or proceedings including whether they have ever been reprimanded, suspended, disbarred or otherwise disciplined by any court, judicial body or administrative agency. Redaction will be permitted when and to the extent necessary to maintain confidential client information. Certified specialists must immediately report to the TESB his or her resignation, suspension or disbarment from the practice of law in any jurisdiction.

32312. The TESB may deny certification, revoke certification, or take other appropriate action on a finding of a grievance committee or court that an Applicant or certified attorney has been guilty of professional misconduct or upon notice of the pendency of such proceedings. However, the TESB will consider the seriousness or the underlying fact of the grievance and will consider the passage of time since such discipline and Applicant's or certified attorney's experience since that time. Failure to disclose such information is a material

misrepresentation and will alone be cause for rejection, revocation, or other appropriate action.

3.2.3.2. Review of Serious Crime.

32321. Applicants and certified attorneys shall furnish a statement as to whether they have ever been convicted, given probation or fined for a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term “serious crime” shall include any felony. It shall also include any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involved improper conduct of an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return, tax evasion, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. Notwithstanding the foregoing, the term “serious crime” shall not include any crime that occurred prior to the Applicant’s admission to the Bar of the State of Indiana if such crime was disclosed to the Supreme Court of Indiana in conjunction with the Applicant’s admission to the Bar of the State of Indiana

32322. The TESB may deny certification, revoke certification, or take other appropriate action if the Applicant or certified attorney has been convicted, given probation or fined for a serious crime as defined herein.

3.2.4. REFERENCES

3.2.4.1. **References in Trust & Estate Law Area.** Applicants shall submit the names and addresses of at least five attorneys or judges to be contacted as references to attest to the Applicant’s Special Competence in the Trust & Estate Law practice area.

3.2.4.2. Qualification of References.

32421. The TESB shall consider the knowledge and experience of references in the Trust & Estate Law area and the nature of the dealings between the references and the Applicant in evaluating applications and may conduct such further investigation as it deems appropriate. *(Amended 01/17/2017)*

32422. Applicants shall not use other attorneys in the Applicant’s firm or who are related to the Applicant as references.

32423. Current members of the TESB may not serve as references. The TESB shall send a reference response form directly to each reference who is named by the Applicant. The reference response forms must be prescribed and approved by the TESB, and the references must complete and return the response forms directly to the TESB, not to the Applicant.

3.2.4.3. **Length of Time.** Certification Applicants shall submit references they have dealt with in the 3 years immediately preceding application.

3.2.4.4. **Types of References.** The following rules define the types of required references:

32441. The Applicant's required references must be attorneys or judges who are knowledgeable regarding the Trust & Estate Law practice area and who are familiar with the Applicant's competence in that area. At least four of the required references must be residents of Indiana, and at least three of required references must themselves be substantially involved in the Trust & Estate Law practice area.

32442. The TESB may, at its option, send reference requests to other attorneys or judges.

3.2.4.5. **Confidentiality.** References concerning Applicants shall be submitted on forms approved and furnished by the TESB. All references received by the TESB are confidential.

3.2.4.6. **Denial.** The TESB may deny certification based on information received from references.

3.2.5. CONTINUING LEGAL EDUCATION.

3.2.5.1. **Required Hours / Time Period.** Certification Applicants must complete 45 hours of accredited CLE in Trust & Estate Law within the 3 years through December 31 of the year of application. Certification Applicants may not receive credit for more than 30 hours of CLE in a calendar year. Distance Education, as defined in Admission & Discipline Rule 29, will be credited as provided in Admission & Discipline Rule 29. (*Amended 01/17/2017, 05/10/2019 and 05/06/2022*)

3.2.5.2. **Related Areas CLE.** Certification Applicants may elect to substitute up to 9 hours of accredited CLE in Related Areas in the reporting period to satisfy this 45 hour requirement. Related Areas include the following (*Amended 05/06/2022*):

- Corporate/partnership law, including entity selection, creation, governance, taxation and succession planning;
- Elder law;

- Divorce law, including prenuptial and postnuptial agreements;
- Nonprofit law, including formation, governance, administration, dissolution and taxation;
- Litigation practice and procedure.

3.2.5.3. **Demonstration of CLE.** Applicants must demonstrate their CLE by attending programs on, teaching courses or seminars in, or participating as a panelist, speaker or workshop leader of, Trust & Estate Law CLE courses approved by the Commission for CLE credit and further approved by the TESB as courses which were on topics listed in 1.5.2. and Related Areas. (*Amended 05/06/2022*)

3.2.6. SUBSTANTIAL INVOLVEMENT.

3.2.6.1. **Substantial Involvement and Special Competence.** Applicants and certified attorneys must devote the minimum required time practicing in the Trust & Estate Law area each year as set forth in ARTICLE 3.3. Failure to meet this requirement will result in denial of application or revocation of certification.

3.2.6.2. **Proof of Malpractice Insurance.** Applicants must show proof of adequate, as determined by the TESB, malpractice insurance or financial ability to pay up to \$500,000 per loss.

ARTICLE 3.3

SPECIFIC AREA REQUIREMENTS FOR TRUST & ESTATE LAW CERTIFICATION

3.3.1. SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE

33.1.1. Certification Applicants must establish substantial involvement and special competence in Trust & Estate Law by providing such information as may be required by the TESB. Time indicating substantial involvement may be time spent on any of the following:

33.1.1.1. Counseling persons in estate planning, including giving advice with respect to incapacity and healthcare planning, gifts, life insurance, wills, trusts, beneficiary designations, non-probate transfers, business arrangements and agreements, and other estate planning matters.

33.1.1.2. Preparing or supervising the preparation of estate planning instruments, *e.g.*, simple and complex wills, including provisions for testamentary trusts, marital deductions and elections; revocable and irrevocable inter vivos trusts; business planning agreements; powers of attorney, health care

documents, and other estate planning instruments; and gift, generation-skipping transfer tax and fiduciary tax returns including representation before the Internal Revenue Service and Indiana Department of Revenue in connection with such tax returns.

33.1.13. Handling or advising with respect to the probate of wills or the administration of decedents' estates and trusts, including supervised and unsupervised administration, guardianships, determinations of heirship, will and trust litigation, and construction suits.

33.1.14. Preparing, reviewing or supervising the preparation of Federal Estate Tax Returns, Indiana Inheritance Tax Returns, and U.S. and Indiana Fiduciary Income Tax returns, including representation before the Internal Revenue Service, state taxing authorities, or the courts in connection with such tax returns and related tax controversies.

33.12. In determining substantial involvement, the TESB may require the Applicant to list the substantive matters without disclosing confidential information participated in during all or part of the 5 year period. The TESB may consider extenuating circumstances.

3.3.2. **CERTIFICATION APPLICANTS.** Certification Applicants must establish that they have devoted a minimum of 1/3 of their billable or pro bono legal services and an average of at least 500 hours per year in the practice of Trust & Estate Law in each of the most recent 5 calendar years preceding the application, and that he or she has engaged in a minimum of 5,000 lifetime hours of practicing Trust & Estate Law. Certification Applicants may not substitute their hours in practice of Elder Law to satisfy these requirements. *(Amended 05/10/2019)*

ARTICLE 3.4

CERTIFICATION DENIAL

34.1. **DENIAL BASED ON STATEMENTS OF REFERENCE.** An application may be denied if the Applicant receives fewer than the requisite number of favorable reference responses or on the basis of substantial and credible information received in the reference process that reflects that the Applicant does not demonstrate special competence. All Statements of Reference received by the TESB are confidential.

34.2. **CONFIDENTIALITY.** All materials and information received or used by the TESB in connection with the certification process, including, but not limited to, the application form and Statements of Reference, shall be confidential and shall not be subject to disclosure to any person, including the Applicant. The Applicant agrees to this by the waiver signed on the application form.

343 PROCESSING.

- 3.4.3.1. Upon receipt, each application will be screened to verify the application has been completed properly.
- 3.4.3.2. After preliminary screening for completeness, each certification application will be assigned an appropriate file number and the filing fee will be deposited.
- 3.4.3.3. While processing the applications, a notice may be sent to each Applicant concerning deficiencies with his or her application.
- 3.4.3.4. The TESB will review applications.
- 3.4.3.5. Each Applicant will be notified by the TESB of the action taken on his or her application. An approved certification Applicant will be sent a notice for examination payment. Failure to make the examination payment prior to the deadline for payment may result in the denial of the application. Certification Applicants denied on this basis will then be required to reapply for certification. An Applicant whose application is denied will be notified of the appellate process.

344 GROUNDS FOR DENIAL OF APPLICATION.

- 3.4.4.1. **Certification.** Certification applications may be denied based on the following reasons. (This list is not exclusive.)
 - 3.4.4.1.1. Certification Applicant's failure to be licensed to practice law and to practice law in Indiana for the required number of years.
 - 3.4.4.1.2. Certification Applicant's not being an active practicing member in good standing as required herein.
 - 3.4.4.1.3. Pending discipline or discipline that has been imposed in any jurisdiction.
 - 3.4.4.1.4. Failure to make payment of any required fees.
 - 3.4.4.1.5. Negative information received from references or an insufficient number of favorable references.
 - 3.4.4.1.6. Certification Applicant's failure to meet the special competence and substantial involvement requirements.
 - 3.4.4.1.7. Certification Applicant's failure to furnish proof of adequate malpractice coverage.
 - 3.4.4.1.8. Certification Applicant's failure to furnish requested information or his or her misrepresentation of any material

facts requested by the TESB.

3.4.4.1.9. Certification Applicant's failure to satisfy any other requirement.

3.4.4.1.10. Any other reason which in the discretion of the TESB indicates that a certification Applicant is not qualified.

3.4.4.2. **Certification Revocation.** Certification may be revoked for a certified specialist (the "Certificate Holder") based on the following reasons. (This list is not exclusive.)

3.4.4.2.1. Certificate Holder's not being an active practicing member in good standing as required herein.

3.4.4.2.2. Certificate Holder's failure to make payment of any required fees.

3.4.4.2.3. Certificate Holder's failure to meet the General Requirements of ARTICLE 3.2 above, including without limitation the Special Competence and Substantial Involvement requirements.

3.4.4.2.4. Certificate Holder's failure to furnish proof of adequate malpractice coverage.

3.4.4.2.5. Certificate Holder's failure to furnish requested information or his or her misrepresentation of any material facts requested by the TESB.

3.4.4.2.6. Certificate Holder's failure to satisfy any other requirement.

3.4.4.2.7. Any other reason which in the discretion of the TESB indicates that a Certificate Holder is not qualified.

345. **NOTICE OF DENIAL OF APPLICATION.** An Applicant who has failed a required examination or whose certification or application for certification has been denied for other reasons or a Certificate Holder whose certification has been revoked shall be provided written notice by mail of such failure of examination, denial of certification or application for certification or revocation of certification. Such notice shall advise the Applicant with specific detail the reasons for such action and shall inform the Applicant of the right to appeal the decision to the TESB. All references received by the TESB are confidential.

346. **RECUSAL.** A member of the TESB shall recuse himself or herself from any and all participation in consideration of an Applicant or from attempting to influence others with respect to an Applicant in the following circumstances:

3.4.6.1. Reasons for Recusal.

3.4.6.1.1. He or she is a current or former law partner or associate of the

Applicant.

3.4.6.1.2. He or she or his or her spouse is related to the Applicant by consanguinity or affinity within the third degree according to the rules of civil law.

3.4.6.1.3. He or she has personal / professional bias or prejudice concerning the Applicant which would prevent him or her from fairly evaluating all of the evidence and information concerning the qualification of the Applicant.

3.4.6.1.4. He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the Applicant for malpractice.

3.4.6.2. **Recusal Process.** The TESB members shall:

3.4.6.2.1. Immediately disclose to the full TESB or Appellate Committee that he or she has a disqualifying interest but need not state the reasons therefor;

3.4.6.2.2. Withdraw from any participation in the matter of the application of that Applicant;

3.4.6.2.3. Refrain from attempting to influence another member of the TESB or Appellate Committee; and

3.4.6.2.4. Refrain from voting upon the application of that Applicant.

3.4.6.3. **Recusal Request.** Any Applicant who is aware of circumstances in Section 3.4.6.1. above may request in writing that an TESB member or member of the Appellate Committee be recused.

347. **DISQUALIFICATION.** In the event that a member of the TESB or Appellate Committee does not voluntarily recuse himself or herself, the Appellate Committee shall, upon becoming aware of factors which indicate a conflict of interest as described above, determine whether or not such member should be disqualified.

ARTICLE 3.5

APPEALS

3.5.1. APPEALS.

35.1.1. **Denial or Revocation of Certification.** A Certification Applicant or Certificate Holder who has received notice of the denial of certification, application for certification or revocation of certification may appeal such denial or revocation by filing a Notice of Appeal with

the TESB in accordance with this Article.

- 35.12. **Examination Appeals.** All examination answers that score within 5% of the passing score as determined by the TESB will be reread by the graders immediately to determine if they should pass or fail. All Applicants who have received notice of failure of the examination may file a Notice of Appeal with the TESB in accordance with this Article. After receipt of the Notice of Appeal, the TESB shall send to the appealing Applicant a copy of the examination questions and the Applicant's answers thereto, subject to the Applicant signing a confidentiality and non-disclosure agreement regarding the test questions. (*Amended 01/17/2017*)
- 35.13. **Payment of Fee and Written Notice of Appeal.** An Applicant who has received notice of denial of application, certification, the failure of examination, or revocation of certification and who wishes to appeal the same must submit a written Notice of Appeal, along with the appeal fee, to the TESB within 30 days after mailing such notice. The written notice of Appeal shall state with as much specificity as possible the reasons that the decision of the TESB was in error.
- 3.5.2. **PETITIONS FOR APPEAL.** The Notice of Appeal referred to above shall be sufficient to constitute an appeal of the TESB decision to deny an application, certification, failure of examination, or revocation of certification. The TESB shall refer the appeal to its Appellate Committee.
3521. **Notice.** The Applicant shall be provided notice of the date on which the Notice of Appeal will be reviewed and the persons appointed to serve on the Appellate Committee.
3522. **Appeal Panel.** The Co-Chairpersons of the TESB shall appoint an independent Appellate Committee to review the appeal. No member of the Appellate Committee shall be a member of the TESB Board. The Appellate Committee will render a decision on the appeal which will be a final decision.
3523. **Review of Appeal.** Any arguments, authorities or evidence which the Applicant wishes to have considered upon appeal shall be submitted in writing by the date on which the appeal is to be considered. Only arguments, authorities and evidence submitted in writing by this date will be considered by the Appellate Committee.
- 3.5.3. **FINAL DECISIONS ON APPEAL.** The final decision on an appeal shall be made by the Appellate Committee. The Appellate Committee shall make a decision within a reasonable time after its review of the Notice of Appeal and shall notify the Applicant of the decision by certified mail.
- 3.5.4. REAPPLICATION FOR CERTIFICATION.**

3541. A certification Applicant who has been denied or whose certification has been revoked may submit a new application in the year next following notification of the denial.
3542. Upon reapplication, the certification Applicant must demonstrate compliance with all requirements for certification in the year of reapplication.

PART 4

RECERTIFICATION, DENIAL, REVOCATION AND APPEALS

ARTICLE 4.1

ELIGIBILITY

To be recertified as a Board Certified Indiana Trust & Estate Lawyer, an attorney must fulfill both the General Requirements and Specific Area Requirements.

ARTICLE 4.2

GENERAL REQUIREMENTS

4.2.1. **PREFACE.** Pursuant to the authority vested in the TESB, the TESB prescribes the following requirements for recertification:

4.2.2. **GENERAL REQUIREMENTS**

4.2.2.1. **State Bar Admission.**

All Applicants must be active members in good standing of the SBOI. Memberships in the TESB or the Indiana State Bar Association are not required for recertification.

4.2.2.2. **Indiana Practice.**

42221. **TESB Recertification Applicants.** All board certified attorneys and recertification Applicants must continue to meet the substantial involvement and special competence requirements pertinent to Trust & Estate Law, both generally and in respect of Indiana Trust & Estate Matters, and provide legal advice and services to Indiana Clients, or to Non-Indiana Clients in respect of Indiana Matters, an average of at least 3 days per week.

42222. **Forms.** Documents, applications, questionnaires, and examinations involved in the recertification process shall be approved by the TESB.

42223. **Fees.** To be eligible for recertification, certified attorneys shall timely pay the fees as established by the TESB.

42224. **Expiration of Recertification.** Recertification shall be for a period of 5 years at the end of which time recertification shall be permitted upon the terms and conditions established by the TESB.

42225. **Revocation of Recertification.** A Certificate of Special Competence re-issued by the TESB may be revoked for good cause as determined by the TESB. A certified attorney must promptly report to the TESB his or her disbarment or suspension from the practice of law in any jurisdiction.
42226. **Failure to Furnish Information: Misrepresentation.** Recertification may be denied, revoked, or other appropriate action taken because of an Applicant's or recertified attorney's failure to furnish the requested information or because of his or her misrepresentation of any material fact provided to the TESB.
42227. **Required Period of Law Practice.** Applicants for Recertification shall have been engaged in the practice of law since certification. "Practice of law" means legal work done primarily for the purpose of legal advice or representation. Service, after admission to the bar of any state or the District of Columbia, as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Practice of law includes law teaching or legal editorial duty which is legal in nature although not the practice of law. Practice must be at least an average of 650 billable or pro bono hours per year, including at least 1,000 billable or pro bono hours during the two-year period prior to recertification.
(Amended 10/01/2016)
42228. **Examination.** Examination is not required for a certified attorney in good standing who is seeking recertification.

4.2.3. CHARACTER AND REPUTATION

4.2.3.1. Disciplinary Review.

Applicants for recertification shall furnish satisfactory evidence of their good character and reputation and shall sign a release form allowing the TESB to receive from the Indiana Supreme Court Disciplinary Commission a complete history of that attorney's records with that Commission. They shall also furnish a list of all other jurisdictions in which they are licensed to practice law, together with a document allowing the TESB to receive the information from the governing body for disciplining attorneys in each such jurisdiction. They shall also

furnish a statement as to whether they are then subject to an investigation, complaint, inquiry or other disciplinary proceedings by any other judicial or administrative body and such further information as may be requested by the TESB. Applicants for recertification shall submit the details of such investigation, complaint, inquiry or proceedings including whether they have ever been reprimanded, suspended, disbarred or otherwise disciplined by any court, judicial body or administrative agency. Redaction will be permitted when and to the extent necessary to maintain confidential client information. Recertified specialists must immediately report to the TESB his or her resignation, suspension or disbarment from the practice of law in any jurisdiction.

- 4231.1. The TESB may deny recertification, revoke recertification, or take other appropriate action on a finding of a grievance committee or court that a recertified attorney has been guilty of professional misconduct or upon notice of the pendency of such proceedings. However, the TESB will consider the seriousness or the underlying fact of the grievance and will consider the passage of time since such discipline and will consider the Recertification Applicant's experience since that time. Failure to disclose such information is a material misrepresentation and will alone be cause for rejection, revocation, or other appropriate action.

4.2.3.2. Review of Serious Crime.

Applicants for recertification shall furnish a statement as to whether they have ever been convicted, given probation or fined for a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term "serious crime" shall include any felony. It shall also include any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involved improper conduct of an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return, tax evasion, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. Notwithstanding the foregoing, the term "serious crime" shall not include any crime that occurred prior to the Applicant's admission to the Bar of the State of Indiana if such crime was disclosed to the Supreme Court of Indiana in conjunction with the Recertification Applicant's admission to the Bar of the State of Indiana

- 4232.1. The TESB may deny recertification, revoke recertification, or take other appropriate action if the Recertification Applicant or

recertified attorney has been convicted, given probation or fined for a serious crime as defined herein.

4.2.4. REFERENCES

4.2.4.1. **References in Trust & Estate Law Area.** Applicants for recertification shall submit the names and addresses of at least five attorneys or judges to be contacted as references to attest to the Applicant's Special Competence in the Trust & Estate Law practice area.

4.2.4.2. Qualification of References.

42421. The TESB shall consider the knowledge and experience of references in the Trust & Estate Law area and the nature of the dealings between the references and the Recertification Applicant in evaluating applications and may conduct such further investigation as it deems appropriate. (*Amended 01/17/2017*)

42422. Recertification Applicants shall not use other attorneys in the Recertification Applicant's firm or who are related to the Recertification Applicant as references.

42423. Current members of the TESB may not serve as references. The TESB shall send a reference response form directly to each reference who is named by the recertification Applicant. The reference response forms must be prescribed and approved by the TESB, and the references must complete and return the response forms directly to the TESB, not to the recertification Applicant.

4.2.4.3. **Length of Time.** Recertification Applicants shall submit references they have dealt with in the 3 years immediately preceding the expiration of recertification.

4.2.4.4. **Types of References.** The following rules define the types of required references:

42441. The recertification Applicant's required references must be attorneys or judges who are knowledgeable regarding the Trust & Estate Law practice area and who are familiar with the Applicant's competence in that area. At least four of the required references must be residents of Indiana, and at least three of required references must themselves be substantially involved in the Trust & Estate Law practice area.

42442. The TESB may, at its option, send reference requests to other attorneys or judges.

- 4.2.4.5. **Confidentiality.** References concerning Recertification Applicants shall be submitted on forms approved and furnished by the TESB. All references received by the TESB are confidential.
- 4.2.4.6. **Denial.** The TESB may deny certification based on information received from references.

4.2.5. CONTINUING LEGAL EDUCATION.

- 4.2.5.1. **Required Hours / Time Period.** Recertification Applicants must complete a total of 60 hours of accredited CLE in Trust & Estate Law in each five-year period ending on December 31st in the 5th year of certification. Recertification Applicants may elect to substitute up to 15 hours of accredited CLE in Related Areas in the reporting period to satisfy this 60 hour requirement. Recertification Applicants may not receive credit for more than 24 hours of CLE in a calendar year. Distance Education, as defined in Admission & Discipline Rule 29, will be credited as provided in Admissions and Discipline Rule 29. *(Amended 05/10/2019 and 05/06/2022)*
- 4.2.5.2. **Demonstration of CLE.** Recertification Applicants must demonstrate their CLE by attending programs on, teaching courses or seminars in, or participating as a panelist, speaker or workshop leader of, Trust & Estate Law CLE courses approved by the Commission for CLE credit and further approved by the TESB as courses which were on topics listed in Section 1.5.2. and Related Areas. *(Amended 05/06/2022)*

4.2.6. SUBSTANTIAL INVOLVEMENT.

- 4.2.6.1. **Substantial Involvement and Special Competence.** Recertification Applicants and recertified attorneys must devote the minimum required time practicing in the Trust & Estate Law area each year as set forth in ARTICLE 4.3. Failure to meet this requirement will result in denial of application or revocation of recertification.
- 4.2.6.2. **Proof of Malpractice Insurance.** Recertification Applicants must show proof of adequate, as determined by the TESB, malpractice insurance or financial ability to pay up to \$500,000 per loss.

ARTICLE 4.3

SPECIFIC AREA REQUIREMENTS FOR TRUST & ESTATE LAW RECERTIFICATION

4.3.1. SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE

- 43.1.1. Recertification Applicants must establish substantial involvement and special competence in Trust & Estate Law, both generally and in respect of Indiana Trust & Estate Matters, by providing such information as may be required by the TESB. Time indicating substantial involvement may be time spent on any of the following:
- 43.1.1.1. Counseling persons in estate planning, including giving advice with respect to incapacity and healthcare planning, gifts, life insurance, wills, trusts, beneficiary designations, non-probate transfers, business arrangements and agreements, and other estate planning matters.
 - 43.1.1.2. Preparing or supervising the preparation of estate planning instruments, *e.g.*, simple and complex wills, including provisions for testamentary trusts, marital deductions and elections; revocable and irrevocable inter vivos trusts; business planning agreements; powers of attorney, health care documents, and other estate planning instruments; and gift, generation-skipping transfer tax and fiduciary tax returns including representation before the Internal Revenue Service and Indiana Department of Revenue in connection with such tax returns.
 - 43.1.1.3. Handling or advising with respect to the probate or administration of decedents' estates and trusts, including supervised and unsupervised administration, guardianships, determinations of heirship, will and trust litigation, and construction suits.
 - 43.1.1.4. Preparing, reviewing or supervising the preparation of Federal Estate Tax Returns, Indiana Inheritance Tax Returns, and U.S. and Indiana Fiduciary Income Tax returns, including representation before the Internal Revenue Service, state taxing authorities, or the courts in connection with such tax returns and related tax controversies.
- 43.1.2. In determining substantial involvement, the TESB may require the Recertification Applicant to list the substantive matters without disclosing confidential information participated in during all or part of the 5 year period. The TESB may consider extenuating circumstances.
- 4.3.2. **RECERTIFICATION APPLICANTS.** Recertification Applicants must establish that, during each year of the 5 year period following certification, they have devoted a minimum of 1/3 of their billable or pro bono legal services and an average of at least 500 hours per year in the practice of Trust & Estate Law, or they must have served as a judge of a court of record actually adjudicating Trust & Estate Law matters, in each of the most recent 5 calendar years preceding the recertification application. Recertification Applicants may not substitute their hours in practice of Elder Law to satisfy these requirements. (*Amended 05/10/2019*)

ARTICLE 4.4

RECERTIFICATION ADMINISTRATION

4.4.1. **RECERTIFICATION COMMITTEE.** The TESB's Co-Chairs shall appoint committees composed of Board Certified Indiana Trust & Estate Lawyers who are not subject to recertification to conduct the recertification process under this PART 4.

4.4.2. **RECUSAL.** A member of the TESB shall recuse himself or herself from any and all participation in consideration of a Recertification Applicant or from attempting to influence others with respect to a Recertification Applicant in the following circumstances:

4.4.2.1. Reasons for Recusal.

4.4.2.1.1. He or she is a current or former law partner or associate of the Recertification Applicant.

4.4.2.1.2. He or she or his or her spouse is related to the Recertification Applicant by consanguinity or affinity within the third degree according to the rules of civil law.

4.4.2.1.3. He or she has personal / professional bias or prejudice concerning the Recertification Applicant which would prevent him or her from fairly evaluating all of the evidence and information concerning the qualification of the Recertification Applicant.

4.4.2.1.4. He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the Recertification Applicant for malpractice.

4.4.2.1.5. He or she is a Recertification Applicant.

4.4.2.2. Recusal Process. The TESB member shall:

4.4.2.2.1. Immediately disclose to the full TESB or Appellate Committee that he or she has a disqualifying interest but need not state the reasons therefor;

4.4.2.2.2. Withdraw from any participation in the matter of the application of that Recertification Applicant;

4.4.2.2.3. Refrain from attempting to influence another member of the TESB or Appellate Committee; and

4.4.2.2.4. Refrain from voting upon the application of that Recertification Applicant.

4.4.2.3. **Recusal Request.** Any Recertification Applicant who is aware of circumstances in Section 4.4.2.1. above may request in writing that an TESB member or member of the Appellate Committee be recused.

4.4.3. **DISQUALIFICATION.** In the event that a member of the TESB or Appellate Committee does not voluntarily recuse himself or herself, the Appellate Committee shall, upon becoming aware of factors which indicate a conflict of interest as described above, determine whether or not such member should be disqualified.

4.4.4. PROCESSING.

4.4.4.1. Upon receipt, each recertification application will be screened to verify the application has been completed properly.

4.4.4.2. After preliminary screening for completeness, each recertification application will be assigned an appropriate file number and the filing fee will be deposited.

4.4.4.3. While processing the applications, a notice may be sent to each Recertification Applicant concerning deficiencies with his or her application.

4.4.4.4. The TESB will review applications.

4.4.4.5. Each Recertification Applicant will be notified by the TESB of the action taken on his or her application. A Recertification Applicant will be notified of recertification or denial of recertification. A Recertification Applicant whose application is denied will be notified of the appellate process.

ARTICLE 4.5

RECERTIFICATION DENIAL

451. **DENIAL BASED ON STATEMENTS OF REFERENCE.** A Recertification Application may be denied if the Recertification Applicant receives fewer than the requisite number of favorable reference responses or on the basis of substantial and credible information received in the reference process that reflects that the Recertification Applicant does not demonstrate special competence. All Statements of Reference received by the TESB are confidential.

452. **CONFIDENTIALITY.** All materials and information received or used by the TESB in connection with the recertification process, including, but not limited to, the application form and Statements of Reference, shall be confidential and shall

not be subject to disclosure to any person, including the Recertification Applicant. The Recertification Applicant agrees to this by the waiver signed on the application form.

453. GROUNDS FOR DENIAL OF APPLICATION.

- 4.5.3.1. **Recertification.** Recertification applications may be denied based on the following reasons. (This list is not exclusive.)
- 4.5.3.1.1. Recertification Applicant's failure to file an application for recertification.
 - 4.5.3.1.2. Recertification Applicant's not being an active practicing member in good standing as required herein or an active practitioner in Indiana as required herein.
 - 4.5.3.1.3. Pending discipline or discipline that has been imposed in any jurisdiction.
 - 4.5.3.1.4. Failure to make payment of the recertification or annual fee.
 - 4.5.3.1.5. Negative information received from references or an insufficient number of favorable references.
 - 4.5.3.1.6. Recertification Applicant's failure to meet the special competence and substantial involvement requirements.
 - 4.5.3.1.7. Recertification Applicant's failure to furnish requested information or his or her misrepresentation of any material facts requested by the TESB.
 - 4.5.3.1.8. Recertification Applicant's failure to furnish proof of adequate malpractice coverage.
 - 4.5.3.1.9. Recertification Applicant's failure to satisfy any other requirement.
 - 4.5.3.1.10. Any other reason which in the discretion of the TESB indicates that a Recertification Applicant is not qualified.
- 4.5.3.2. **Recertification Revocation.** Recertification may be revoked for a recertified specialist (the "Certificate Holder") based on the following reasons. (This list is not exclusive.)
- 4.5.3.2.1. Certificate Holder's not being an active practicing member in good standing or an Indiana practitioner as required herein.
 - 4.5.3.2.2. Certificate Holder's failure to make payment of any required fees.

- 4.5.3.2.3. Certificate Holder's failure to meet the General Requirements of ARTICLE 4.2, including without limitation the Special Competence and Substantial Involvement requirements.
- 4.5.3.2.4. Certificate Holder's failure to furnish proof of adequate malpractice coverage.
- 4.5.3.2.5. Certificate Holder's failure to furnish requested information or his or her misrepresentation of any material facts requested by the TESB.
- 4.5.3.2.6. Certificate Holder's failure to satisfy any other requirement.
- 4.5.3.2.7. Any other reason which in the discretion of the TESB indicates that a Certificate Holder is not qualified.

454. **NOTICE OF DENIAL OR REVOCATION.** A Recertification Applicant whose recertification or application for recertification has been denied or a Certificate Holder whose recertification has been revoked shall be provided written notice by mail of such denial of recertification, application for recertification or revocation of recertification. Such notice shall advise the Recertification Applicant or Certificate Holder with specific detail the reasons for such action and shall inform the Recertification Applicant or Certificate Holder of the right to appeal the decision to the TESB.

ARTICLE 4.6

APPEALS

4.6.1. APPEALS.

- 4.6.1.1. **Denial of Application.** A Recertification Applicant who has received notice of the denial of application may appeal the denial by filing a Notice of Appeal with the TESB in accordance with this Article.
- 4.6.1.2. **Denial or Revocation of Recertification.** A Recertification Applicant or Certificate Holder who has received notice of denial of recertification or revocation of recertification may file a Notice of Appeal with the TESB in accordance with this Article.
- 4.6.1.3. **Payment of Fee and Written Notice of Appeal.** A Recertification Applicant or Certificate Holder who has received notice of denial of recertification or application for recertification or revocation of recertification and who wishes to appeal the same must submit a written Notice of Appeal, along with the appeal fee, to the TESB within 30 days after mailing such notice. The written notice of Appeal shall state with as much specificity as possible the reasons that the decision of the TESB was in error.
- 4.6.2. **PETITIONS FOR APPEAL.** The Notice of Appeal referred to above shall be sufficient to constitute an appeal of the TESB decision to deny a recertification or application recertification or reverse a revocation of recertification.
- 4.6.2.1. **Notice.** The Recertification Applicant shall be provided notice of the date on which the Notice of Appeal will be reviewed and the persons appointed to serve on the Appellate Committee. The TESB shall refer all appeals to the Appellate Committee.
- 4.6.2.2. **Appeal Panel.** The Co-Chairpersons of the TESB shall appoint an independent Appellate Committee to review the appeal. No member of the Appellate Committee shall be a member of the TESB Board. The Appellate Committee will render a decision on an appeal which will be a final decision.
- 4.6.2.3. **Review of Appeal.** Any arguments, authorities or evidence which the Recertification Applicant wishes to have considered upon appeal shall be submitted in writing by the date on which the appeal is to be considered. Only arguments, authorities and evidence submitted in writing by this date will be considered by the Appellate Committee.
- 4.6.3. **FINAL DECISIONS ON APPEAL.** The final decision on an appeal shall be made by the Appellate Committee. The Appellate Committee shall make a decision within a reasonable time after its review of the Notice of Appeal and shall notify the Recertification Applicant or Certificate Holder of the decision by certified mail.
- 4.6.4. REAPPLICATION FOR RECERTIFICATION.**
- 4.6.4.1. A Recertification Applicant who has been denied or whose recertification has been revoked may submit a new application in the

year next following notification of the denial or revocation.

- 4.642. Upon reapplication, the Recertification Applicant must demonstrate compliance with all requirements for recertification in the year of reapplication, including in the case of a Recertification Applicant whose certification or recertification was revoked for non-payment of fees, payment of all certification fees that Recertification Applicant has failed to pay since his or her original certification.
- 4.643. A Recertification Applicant who has been denied may again apply for recertification and must demonstrate compliance with the recertification requirements in the year of reapplication, including in the case of a Recertification Applicant whose certification or recertification was revoked for non-payment of fees, payment of all certification fees that Recertification Applicant has failed to pay since his or her original certification.

PART 5

FEES

ARTICLE 5.1

ESTABLISHMENT AND REVISION OF FEES

The following fees have been established in connection with this specialization program, but such fees may be adjusted from time to time by the TESB.

ARTICLE 5.2

FEES

- 5.2.1. **CERTIFICATION.** A fee of \$350.00 shall be charged for each certification application submitted. Rejection or withdrawal of application will not entitle the certification Applicant to a refund of the fee or any part thereof. Failure to pay the application fee will result in the certification application being returned to the certification Applicant.
- 5.2.2. **RECERTIFICATION.** A fee of \$250.00 shall be charged for each Recertification Application submitted. Rejection or withdrawal of application will not entitle the recertification Applicant to a refund of the fee or any part thereof. Failure to pay the application fee will result in the recertification application being returned to the Recertification Applicant, unless the certified attorney has indicated that he or she does not wish to be recertified.

ARTICLE 5.3

EXAMINATION FEE

A fee of \$200.00 shall be due and payable after the certification Applicant has been notified that he or she is eligible to take the examination. The payment of such fee is a prerequisite to the taking of an examination.

ARTICLE 5.4

APPEAL FEE

A fee of \$50.00 shall be charged for appealing the decision of the TESB. Failure to pay the appeal fee will result in the appeal being returned to the Applicant.

ARTICLE 5.5

ANNUAL FEE

An annual fee of \$100.00 is due and payable by a deadline to be established each calendar year by the TESB. Failure to timely pay the annual fee shall be grounds for revocation of certification.

PART 6

DUTIES OF CERTIFIED AND RECERTIFIED SPECIALISTS

An attorney certified or recertified as a Board Certified Indiana Trust & Estate Lawyer (or “BCITEL”) must fully comply with Indiana Admission and Discipline Rule 30, the rules and policies of the TESB and the Rules and Policies of the Commission.

PART 7

AMENDMENT

This plan may be amended by the TESB subject to approval by the Indiana Commission for Continuing Legal Education.