INDIANA STATE BAR ASSOCIATION

PROBATE, TRUST AND REAL PROPERTY SECTION

PRACTICE SPECIALTY CERTIFICATION PLAN FOR

ESTATE PLANNING AND ADMINISTRATION

(As of 3-4-08)

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PART 1

PRINCIPLES

ARTICLE 1.1

Purpose

The purpose of certifying expert Estate Planning and Administration practitioners is to promote excellent practice among these practitioners who serve Indiana clients. Expert attorneys exceed basic competence and demonstrate extraordinary, practical knowledge and skill. Certification as an Estate Planning and Administration specialist 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 the Estate Planning and Administration area.

ARTICLE 1.2

Definitions

1.2.1. "ACTEC" refers to the American College of Trust and Estate Counsel.

1.2.2. "ACTEC Members" refers to Fellows of ACTEC in good standing thereof as of July 1, 2006.

1.2.3. "Applicant(s)" refers to both the certification or recertification applicant(s), unless otherwise specifically stated.

1.2.4. "Commission" refers to the Indiana Commission for CLE.

1.2.5. "CLE" refers to continuing legal education.

1.2.6. "Estate Planning and Administration" refers to the practice of law in Indiana 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.

1.2.7. "EPASCB" refers to the Estate Planning and Administration Specialty Certification Board established under this plan by the PTRP.

1.2.8. "General Requirements" refers to the first part of the Standards in Article 3.2. herein.

1.2.9. "Plan" refers to the Indiana Plan for Recognition and Regulation of Specialization in the Law.

1.2.10. “PTRP" refers to the Probate, Trust and Real Property Section of the Indiana State Bar Association.

1.2.11. "Rules" refers to the Rules and Regulations of the EPASCB.

1.2.12. “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.

1.2.13. “Special Competence” refers to an attorney’s proficiency in the estate planning and administration area as evidenced by such attorney’s mastery of those skills and the specific knowledge noted in 1.5.1 and 1.5.2 herein.

1.2.14. “Specific Area Requirements” refers to the second part of the Standards, which includes the substantial involvement and Special Competence requirements for the Estate Planning and Administration area, which are distinguishable from the more general requirements such as admission to practice law in the State of Indiana.

1.2.15. “Standards” refers to the Standards for Attorney Certification. The Standards are composed of both the General Requirements and the Specific Area Requirements.

ARTICLE 1.3

Performance Evaluation Philosophy

The examination process should fulfill the certification purpose of distinguishing expert Estate Planning and Administration 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 EPASCB 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 Estate Planning and Administration 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 Estate Planning and Administration.

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 Estate Planning and Administration area;

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 Estate Planning and Administration area;

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 Estate Planning and Administration area;

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 Estate Planning and Administration area, including pleadings and filings.

1.5.2. Examinations should measure specific knowledge and skills which may include the following:

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 draftperson for the examination.

1.5.4. The Standards for certification and the examination specifications in the Estate Planning and Administration area 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 EPASCB 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 EPASCB 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. Access to the examination will be limited as directed by the EPASCB.

ARTICLE 1.6

Examination Administration and Evaluation

1.6.1. 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.

1.6.2. After the scores are tabulated, EPASCB will prepare a distribution chart. The graders will read the distribution chart and recommend a passing score to the EPASCB. 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.

1.6.3. A psychometrist may evaluate the examination results and propose modifications to the examination and the examination process.

ARTICLE 1.7

ACTEC Member Certification

1.7.1. ACTEC Members may become certified in the first year of certification without submitting to a certification written examination if they comply with all requirements for certification other than the written examination and comply with the special requirements established under Article 3.3.

1.7.2. All ACTEC Members serving as inaugural members of the EPASCB shall be considered to have satisfied the requirements of Article 3.3 if they have satisfied all requirements for certification other than the written examination.

1.7.3. All ACTEC Members that do not serve as inaugural members of the EPASCB must perform such duties in 2005 and 2006, to the satisfaction of the EPASCB, as the EPASCB may delegate to them.

1.7.4. ACTEC Members qualified for certification under Article 3.3 shall receive their certifications simultaneously with the inaugural class of certification Applicants that are certified by examination.

PART 2

ESTATE PLANNING AND ADMINISTRATION SPECIALTY CERTIFICATION BOARD

ARTICLE 2.1

Board Establishment

The PTRP hereby establishes an Estate Planning and Administration Certification Board (hereinafter referred to as the "EPASCB").

2.1.1. The initial EPASCB shall be composed of 13 members appointed by the Chairperson of the PTRP. The initial EPASCB shall be composed of members of the SBOI, who are ACTEC members. The EPASCB may appoint advisory members who are members of the Indiana Judiciary or hold a faculty position with a Law School located within Indiana. Advisory members shall be non-voting members. All subsequent members of the EPASCB must be members of the PTRP, who are Estate Planning and Administration specialists certified by the EPASCB, and appointed by the Co-Chairpersons of the EPASCB upon the approval by the Chairperson of the PTRP.

2.1.2. The Chairperson of the PTRP shall designate two of the initial members of the EPASCB as Co-Chairs whose terms shall expire in different years. Thereafter, the EPASCB shall designate successor members as Co-Chairs with terms expiring in different years. All members of the EPASCB serve at the discretion of the PTRP and may be removed, without cause, by a simple majority vote of the officers and council members of the PTRP.

2.1.3. Seven of the initial members of the EPASCB shall hold office for a term until January 1 of the fourth year following their appointment or until their successors are appointed unless they sooner die, become incapacitated, resign or are removed. Six of the initial members of the EPASCB shall hold office for a term until January 1 of the third year following their appointment or until their successors are appointed unless they sooner die, become incapacitated, resign or are removed. The Chairperson of the PTRP shall designate which of the initial members of the EPASCB shall hold office for the longer of these terms and which of the initial members of the EPASCB shall hold office for the shorter of these terms. Thereafter, successor members of the EPASCB shall hold office for a term of two years or until their successors are appointed unless they sooner die, become incapacitated, resign or are removed. The Co-Chairpersons of the EPASCB shall appoint new members or reappoint existing members after expiration of the terms of the initial members upon the approval by the Chairperson of the PTRP. Any vacancy shall be filled in the manner provided for successor appointments. All members of the EPASCB shall be eligible for reappointment but for no more than one additional consecutive term.

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 EPASCB shall have general authority over all matters pertaining to certification of Estate Planning and Administration specialization and shall have the authority and duty to:

2.2.1. Administer the program for the recognition and regulation of Estate Planning and Administration specialization. The EPASCB shall promptly notify Applicants who have been approved for specialty certification or recertification.

2.2.2. Continue to define and designate areas of law in which certificates of special competence in Estate Planning and Administration specialization may be granted and provide procedures by which such areas may be determined, redefined or eliminated.

2.2.3. Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates of special competence to attorneys in Estate Planning and Administration specialization.

2.2.4. 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 EPASCB.

2.2.5. 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.

2.2.6. 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 EPASCB.

2.2.7. 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 Estate Planning and Administration specialization in the manner determined by the EPASCB.

2.2.8. 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.

2.2.9. Make and publish standards, rules, policies and regulations to implement this authority, all in accordance with the limitations on the power of the EPASCB and the minimum standards prescribed by the EPASCB.

ARTICLE 2.3

Limitations on Authority of the Board

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

2.3.1. 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.

2.3.2. 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.

2.3.3. All requirements for and all benefits to be derived from certification granted by the EPASCB are individual and may not be fulfilled by or attributed to a law firm of which the certified attorney may be a member.

2.3.4. Participation in the Plan shall be on an entirely voluntary basis.

2.3.5. 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 EPASCB.

2.3.6. No rules or standards shall be adopted in contravention of the rules of the Indiana Supreme Court or its commissions and agencies.

2.3.7. The EPASCB 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 EPASCB may be established by the EPASCB for Estate Planning and Administration specialization. These committees shall advise and assist the EPASCB in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in Estate Planning and Administration. Standards for this specialty area shall be established by the EPASCB, but it may be advised in this and other relevant matters by an Advisory Committee. Advisory Committee members shall be appointed by the EPASCB in such number and for such terms as the EPASCB 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 specialist in Estate Planning and Administration, 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 EPASCB, the EPASCB 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 EPASCB or the Indiana State Bar Association are not required for certification.

3.2.2.2. **Indiana Office and Practice.**

3.2.2.2.1. **Certification Applicants.** For the 3 years immediately preceding application, a certification Applicant must have maintained an office located entirely within the State of Indiana from which the Applicant personally conducted business an average of at least 3 days per week. Failure to meet this requirement will result in denial of application.

3.2.2.2.2. **EPASCB Certified Attorneys.** All board certified attorneys must continue to meet the substantial involvement and special competence requirements pertinent to Estate Planning and Administration and maintain an office located entirely within the State of Indiana from which the Applicant personally conducts business an average of at least 3 days per week. These are found in the Specific Area Requirements.

3.2.2.2.3. **Forms.** Documents, applications, questionnaires, and examinations involved in the certification process shall be approved by the EPASCB.

3.2.2.2.4. **Fees**. Applicants and certified attorneys shall timely pay the fees as established by the EPASCB.

3.2.2.2.5. **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 EPASCB.

3.2.2.2.6. **Revocation of Certification**. A certificate of special competence issued by the EPASCB may be revoked for good cause as determined by the EPASCB.

3.2.2.2.7. **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 EPASCB.

3.2.2.2.8. **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 on a full-time basis. Practice of law is defined in the Specific Area Requirements. "Practice of law" means full-time 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 which otherwise satisfies these requirements but which is on a part-time basis will satisfy the requirement if (a) the balance of certification Applicant's activity is work such as full-time law teaching or full-time legal editorial duty which is legal in nature although not the practice of law, or (b) the part-time practice was at least 800 billable or pro bono hours per year and the Applicant practiced law for a minimum of 12 years, which years of practice need not be consecutive.

3.2.2.2.9. **Examination**. Except as provided herein, 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 Estate Planning and Administration 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.

3.2.3. **CHARACTER AND REPUTATION**

3.2.3.1. **Disciplinary Review.**

3.2.3.1.1. Applicants and certified attorneys shall furnish satisfactory evidence of their good character and reputation and shall sign a release form allowing the EPASCB 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 EPASCB 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 EPASCB. 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 EPASCB his or her resignation, suspension or disbarment from the practice of law in any jurisdiction.

3.2.3.1.2. The EPASCB 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 EPASCB 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.**

3.2.3.2.1. 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

3.2.3.2.2. The EPASCB 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 Estate Planning and Administration Area**. Applicants shall submit names of references to attest to Applicant's competence in Estate Planning and Administration. The references, themselves, shall be substantially involved in the Estate Planning and Administration area.

3.2.4.2. **Qualification of References.**

3.2.4.2.1. The EPASCB shall consider the knowledge and experience of references in the Estate Planning and Administration area and the nature of the dealings between the references and the Applicant in evaluating applications and may conduct such further investigate as it deems appropriate.

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

3.2.4.2.3. Current members of the EPASCB may not serve as references. The EPASCB shall send to references forms prepared and approved by the EPASCB, which forms shall be returned to the EPASCB and 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:

3.2.4.4.1. Applicants shall submit a list of five names and addresses of attorneys and judges **at least four of whom shall be residents of Indiana** to be contacted as references to attest to Applicant's Special Competence in the Estate Planning and Administration area.

3.2.4.4.2. The EPASCB may, at its option, send reference requests to other attorneys and/or judges.

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

3.2.4.6. **Denial.** The EPASCB 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 CLE in Estate Planning and Administration 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 (except that in 2006 and 2007 there is no limit on the number of hours of CLE credit permitted in a calendar year).

3.2.5.2. **Demonstration of CLE.** Applicants must demonstrate their CLE by attending programs on, teaching courses or seminars in, and/or participating as a panelist, speaker or workshop leader of, Estate Planning and Administration CLE courses approved by the Commission for CLE credit and further approved by the EPASCB as courses which were on topics listed in Section 1.5.2.

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 Estate Planning and Administration 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 EPASCB, malpractice insurance or financial ability to pay up to $500,000 per loss.

ARTICLE 3.3

Specific Area Requirements For

Estate Planning and Administration

3.3.1. **SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE**

3.3.1.1. Certification Applicants must establish substantial involvement and special competence in Estate Planning and Administration law by providing such information as may be required by the EPASCB. Time

indicating substantial involvement may be time spent on any of the following:

3.3.1.1.1. 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.

3.3.1.1.2. 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.

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

3.3.1.1.4. 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.

3.3.1.2. In determining substantial involvement, the EPASCB 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 EPASCB 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 Estate Planning and Administration 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 Estate Planning and Administration law.

ARTICLE 3.4

Certification Denial

3.4.1. **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 EPASCB are confidential.

3.4.2. **Confidentiality.** All materials and information received or used by the EPASCB 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.

3.4.3. **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 EPASCB will review applications.

3.4.3.5. Each Applicant will be notified by EPASCB 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.

3.4.4. **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 EPASCB.

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 EPASCB 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, 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 EPASCB.

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 EPASCB indicates that a Certificate Holder is not qualified.

3.4.5. **Notice of Denial of Application.** An Applicant shall be provided written notice by mail of denial of application certification, the failure of examination, or the 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 EPASCB. All references received by the EPASCB are confidential.

3.4.6. **Recusal.** A member of EPASCB 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 EPASCB members shall:

3.4.6.2.1. Immediately disclose to the full EPASCB 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 EPASCB 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 EPASCB member or member of the Appellate Committee be recused.

3.4.7. **Disqualification.** In the event that a member of the EPASCB 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.**

3.5.1.1. **Denial of Application.** An Applicant who has received notice of the denial of application may appeal the denial by filing a Notice of Appeal with the EPASCB in accordance with this Article.

3.5.1.2. **Examination Appeals.** All examination answers that score within 5% of the passing score as determined by EPASCB 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 EPASCB in accordance with this Article. After receipt of the Notice of Appeal, EPASCB shall send to the appealing Applicant a copy of the examination questions and the Applicant's answers thereto.

3.5.1.3. **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 EPASCB 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 EPASCB 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 EPASCB decision to deny an application, certification, failure of examination, or revocation of certification. The EPASCB shall refer the appeal to its Appellate Committee.

3.5.2.1. **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.

3.5.2.2. **Appeal Panel.** The Co-Chairpersons of EPASCB shall appoint an independent Appellate Committee to review the appeal. No member of the Appellate Committee shall be a member of the EPASCB Board. The Appellate Committee will render a decision on the appeal which will be a final decision.

3.5.2.3. **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.**

3.5.4.1. 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.

3.5.4.2. 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 specialist in Estate Planning and Administration, 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 EPASCB, the EPASCB 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 EPASCB or the Indiana State Bar Association are not required for recertification.

4.2.2.2. **Indiana Office and Practice.**

4.2.2.2.1. **EPASCB Recertification Applicants.** All board certified attorneys and recertification Applicants must continue to meet the substantial involvement and special competence requirements pertinent to Estate Planning and Administration and maintain an office located entirely within the State of Indiana from which the Applicant personally conducts business an average of at least 3 days per week. These are found in the Specific Area Requirements.

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

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

4.2.2.2.4. **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 EPASCB.

4.2.2.2.5. **Revocation of Recertification**. A certificate of special competence re-issued by the EPASCB may be revoked for good cause as determined by the EPASCB.

4.2.2.2.6. **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 EPASCB.

4.2.2.2.7. **Required Period of Law Practice.** Applicants for Recertification shall have been engaged in the practice of law on a full-time basis since certification. "Practice of law" means full-time 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 which otherwise satisfies these requirements but which is on a

part-time basis will satisfy the requirement if (a) the balance of Recertification Applicant's activity is work such as full-time law teaching or full-time legal editorial duty which is legal in nature although not the practice of law, or (b) the part-time practice was at least 800 billable or pro bono hours per year and the Recertification Applicant practiced law for a minimum of 12 years, which years of practice need not be consecutive.

4.2.2.2.8. **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.**

4.2.3.1.1. Applicants for recertification shall furnish satisfactory evidence of their good character and reputation and shall sign a release form allowing the EPASCB 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 EPASCB 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 EPASCB. 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 EPASCB his or her resignation, suspension or disbarment from the practice of law in any jurisdiction.

4.2.3.1.2. The EPASCB 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 EPASCB 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.**

4.2.3.2.1. 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

4.2.3.2.2. The EPASCB 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 Estate Planning and Administration Area**. Applicants for Recertification shall submit names of references to attest to Applicant's competence in Estate Planning and Administration. The references, themselves, shall be substantially involved in the Estate Planning and Administration area.

4.2.4.2. **Qualification of References.**

4.2.4.2.1. The EPASCB shall consider the knowledge and experience of references in the Estate Planning and Administration area and the nature of the dealings between the references and the Recertification Applicant in evaluating applications and may conduct such further investigate as it deems appropriate.

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

4.2.4.2.3. Current members of the EPASCB may not serve as references. The EPASCB shall send to references forms prepared and approved by the EPASCB, which forms shall be returned to the EPASCB and 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:

4.2.4.4.1. Recertification Applicants shall submit a list of five names and addresses of Indiana attorneys and judges **at least four of whom shall be residents of Indiana** to be contacted as references to attest to Recertification Applicant's Special Competence in the Estate Planning and Administration area.

4.2.4.4.2. The EPASCB may, at its option, send reference requests to other attorneys and/or judges.

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

4.2.4.6. **Denial.** The EPASCB 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 60 hours of CLE in Estate Planning and Administration by December 31 of each 5th year of certification. Recertification Applicants may not receive credit for more than 24 hours of CLE in a calendar year.

4.2.5.2. **Demonstration of CLE.** Recertification Applicants must demonstrate their CLE by attending programs on, teaching courses or seminars in, and/or participating as a panelist, speaker or workshop leader of, Estate Planning and Administration CLE courses approved by the Commission for CLE credit and further approved by the EPASCB as courses which were on topics listed in Section 1.5.2.

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 Estate Planning and Administration 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 EPASCB, malpractice insurance or financial ability to pay up to $500,000 per loss.

ARTICLE 4.3

Specific Area Requirements For

Estate Planning and Administration

4.3.1. SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE

4.3.1.1. Recertification Applicants must establish substantial involvement and special competence in Estate Planning and Administration law by providing such information as may be required by the EPASCB. Time indicating substantial involvement may be time spent on any of the following:

4.3.1.1.1. 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.

4.3.1.1.2. 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.

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

4.3.1.1.4. 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.

4.3.1.2. In determining substantial involvement, the EPASCB 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 EPASCB 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 Estate Planning, and Administration law, or they must have served as a judge of a court of record actually adjudicating Estate Planning and Administration law matters, in each of the most recent 5 calendar years preceding the recertification application.

ARTICLE 4.4

Recertification Denial

4.4.1. **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 EPASCB are confidential.

4.4.2. **Confidentiality.** All materials and information received or used by the EPASCB 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.

4.4.3. **Processing.**

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

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

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

4.4.3.4. The EPASCB will review applications.

4.4.3.5. Each Recertification Applicant will be notified by EPASCB 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.

4.4.4. **Grounds for Denial of Application.**

4.4.4.1. **Recertification.** Recertification applications may be denied based on the following reasons. (This list is not exclusive.)

4.4.4.1.1. Recertification Applicant's failure to file an application for recertification.

4.4.4.1.2. Recertification Applicant's not being an active practicing member in good standing as required herein or an active practitioner in Indiana as required herein.

4.4.4.1.3. Pending discipline or discipline that has been imposed in any jurisdiction.

4.4.4.1.4. Failure to make payment of the recertification or annual fee.

4.4.4.1.5. Negative information received from references or an insufficient number of favorable references.

4.4.4.1.6. Recertification Applicant's failure to meet the special competence and substantial involvement requirements.

4.4.4.1.7. Recertification Applicant's failure to furnish requested information or his or her misrepresentation of any material facts requested by the EPASCB.

4.4.4.1.8. Recertification Applicant's failure to furnish proof of adequate malpractice coverage.

4.4.4.1.9. Recertification Applicant's failure to satisfy any other requirement.

4.4.4.1.10. Any other reason which in the discretion of the EPASCB indicates that a Recertification Applicant is not qualified.

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

4.4.4.2.1. Certificate Holder's not being an active practicing member in good standing or an Indiana practitioner as required herein.

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

4.4.4.2.3. Certificate Holder's failure to meet the General Requirements of ARTICLE 4.2, including without limitation the Special Competence and Substantial Involvement requirements.

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

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

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

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

4.4.5. **Notice of Denial of Application.** A Recertification Applicant shall be provided written notice by mail of denial of application, recertification or the revocation of recertification. Such notice shall advise the Recertification Applicant with specific detail the reasons for such action and shall inform the Recertification Applicant of the right to appeal the decision to the EPASCB.

4.4.6. **Recusal.** A member of EPASCB 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:

4.4.6.1. **Reasons for Recusal.**

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

4.4.6.1.2. 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.

4.4.6.1.3. 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.

4.4.6.1.4. 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 Recertification Applicant for malpractice.

4.4.6.2. **Recusal Process.** The EPASCB member shall:

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

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

4.4.6.2.3. Refrain from attempting to influence another member of the EPASCB or Appellate Committee; and

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

4.4.6.3. **Recusal Request.** Any Recertification Applicant who is aware of circumstances in Section 4.4.6.1. may request in writing that an EPASCB member or member of the Appellate Committee be recused.

4.4.7. **Disqualification.** In the event that a member of the EPASCB 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 4.5

Appeals

4.5.1. **Appeals.**

4.5.1.1. **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 EPASCB in accordance with this Article.

4.5.1.2. **Denial of Recertification.** A Recertification Applicant for recertification who has received notice of denial of recertification may file a Notice of Appeal with the EPASCB in accordance with this Article.

4.5.1.3. **Payment of Fee and Written Notice of Appeal.** A Recertification Applicant who has received notice of denial of application, recertification 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 EPASCB 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 EPASCB was in error.

4.5.2. **Petitions for Appeal.** The Notice of Appeal referred to above shall be sufficient to constitute an appeal of the EPASCB decision to deny a recertification application or reverse a revocation of recertification.

4.5.2.1. **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 EPASCB shall refer all appeals to the Appellate Committee.

4.5.2.2. **Appeal Panel.** The Co-Chairpersons of EPASCB shall appoint an independent Appellate Committee to review the appeal. No member of the Appellate Committee shall be a member of the EPASCB Board. The Appellate Committee will render a decision on an appeal which will be a final decision.

4.5.2.3. **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.

4.5.3. **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 Recertification Applicant of the decision by certified mail.

4.5.4. **Reapplication for Recertification.**

4.5.4.1. A Recertification 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.

4.5.4.2. Upon reapplication, the Recertification Applicant must demonstrate compliance with all requirements for recertification in the year of reapplication.

4.5.4.3. 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.

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 EPASCB.

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 EPASCB. 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 EPASCB. 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 an Estate Planning and Administration specialist must fully comply with Indiana Admission and Discipline Rule 30, the rules and policies of EPASCB and the Rules and Policies of the Commission.

PART 7

AMENDMENT

This plan may be amended by the PTRP subject to approval by the Indiana Supreme Court and its Commission on Continuing Legal Education.