

**ESTATE PLANNING AND PROBATE LAW  
SPECIALIZATION ADVISORY BOARD**

**STANDARDS AND PROCEDURES  
FOR  
CERTIFICATION, RECERTIFICATION, AND DECERTIFICATION**

By virtue of the authority vested in the Estate Planning and Probate Law Specialization Advisory Board (Board) and the Commission on Continuing Lawyer Competence (Commission) by the South Carolina Supreme Court (Court), the Board prescribes the following standards and procedures for certification, recertification, and decertification as a specialist in estate planning and probate law (see Rule 408, SCACR and Commission Regulations).

**I. GENERAL REQUIREMENTS AND DEFINITIONS**

- A. Nothing herein shall in any manner limit the right of an attorney certified in estate planning and probate law to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though certified in estate planning and probate law.
- B. No lawyer shall be required to obtain a certificate in estate planning and probate law before practicing in that field. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in the field of estate planning and probate law, even though not certified therein.
- C. All applicants for certification or recertification in estate planning and probate law must be active members in good standing with the South Carolina Bar, and shall meet the requirements for certification or recertification prescribed by the Board.
- D. Certification in estate planning and probate law is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm, corporation, company, or other entity of which the certified lawyer is a member or employee.
- E. Forms, documents, applications, questionnaires, and examinations involved in the certification, recertification, or decertification process, as well as fees required of applicants and certified lawyers shall be as prescribed by the Board and/or Commission.
- F. Certification shall be for a period of five years at the end of which time recertification shall be permitted as indicated in § IV, below.
- G. Estate Planning and Probate Law is the practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to: applicable tax consequences; the

preparation of legal instruments in order to effectuate estate plans; and the administration of estates, including all tax-related matters.

- H. Applicants shall furnish satisfactory evidence of their good character and reputation. They shall also provide information in whatever form required by the Board as to whether they are now subject to an investigation, complaint, inquiry, or other disciplinary proceedings by any segment of the Bar, including but not limited to any local, state, or other grievance board, committee, or commission (hereinafter committee); and if so, the details of such investigation, complaint, inquiry, or proceedings including whether they have ever been reprimanded, suspended, disbarred, or otherwise disciplined by any court or grievance committee.

The Board may deny certification or recertification on a finding of a grievance committee or a court that an applicant has been guilty of professional misconduct, or defer certification or recertification based upon the pendency of such proceedings. However, the Board will consider the seriousness of the underlying fact of the grievance, the passage of time since such discipline, applicant's experience since that time, and any history of other disciplinary actions or pending actions. Failure to disclose such information is a material misrepresentation and may be cause for rejection.

- I. Applicants will provide information in the form required by the Board as to whether they have ever been convicted, given probation, fined, or otherwise punished for any crime except a minor traffic offense, regardless of whether the conviction and/or punishment resulted from a plea of guilty, nolo contendere, or from a verdict after trial or otherwise and regardless of the pendency of an appeal.

The Board may deny certification or recertification if an applicant has been convicted, given probation, fined, or otherwise punished for any crime except a minor traffic offense.

- J. An applicant shall apply for certification as a specialist by completing and filing with the Board an application form furnished by the Board calling for information indicative of and relevant to the applicant's involvement, experience, competency, and practice in the field of estate planning and probate law. By completing and filing such application, the applicant shall be deemed to have authorized the Board to take all appropriate action to resolve any questions with respect to the applicant's involvement, experience, competency, and practice in the field of estate planning and probate law and to verify the information furnished by the applicant in making the application. In the appraisal of each applicant, the Board will take such steps as it deems advisable or necessary under the circumstances to assure that the applicant presented to the Court for certification as a specialist is a lawyer who is technically competent in the field and of whom the Board has no notice of any personal or ethical deficiencies that might impair his/her professional performance as a specialist. Accordingly, the Board shall

require applicants to disclose any information needed to determine whether to present his/her application to the Court for certification. The Board not only may verify information submitted by the applicant, but may, in its discretion, conduct its own investigation into the applicant's competency, experience, involvement, and reputation. Should the Board determine that an applicant's competency, character, experience, involvement, or reputation does not support his/her application for certification, the Board shall reject the application subject to such rights of hearing and appeal as may be promulgated by the Commission and the Supreme Court.

- K. Each applicant shall submit the names and addresses of five (5) lawyers engaged in the "practice of law," as defined in § II A, who are familiar with the applicant's practice and who are not partners or associates or members of this Board or the Commission, to be contacted as references to attest to applicant's experience, involvement and competency in the practice of estate planning and probate law. The Board may, in its discretion and without notice to an applicant, secure information concerning any particular applicant's practice, involvement, experience, and competency in the specialty area from lawyers and judges other than those whose names are submitted by an applicant.
- L. In addition to any requirement heretofore or hereinafter listed, the Board may, in its sole discretion, require additional information from a particular applicant when in its judgment such additional information is necessary to a decision with respect to certification, recertification, or decertification.

## II. MINIMUM STANDARDS FOR CERTIFICATION

### A. Required Period of Law Practice

Applicants shall have been engaged in the practice of law for a period of five (5) years on a full-time basis. "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 of any court of record shall be considered practice of law. Corporate or government service, including military service, as an attorney, 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 giving legal advice to, or representation of, the corporation or government agency or individuals primarily connected with the corporation or government agency. Practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy the requirement if the balance of applicant's activity is work such as law teaching or legal writing which, although legal in nature, may not qualify as practice of law.

### B. Substantial Involvement

Applicants must show substantial involvement and special competency in estate planning and probate law practice during the five (5) years immediately preceding application by providing such information as may be required by the Board.

During each of the five (5) years immediately preceding application, applicants must have devoted a minimum of 35% of their time practicing estate planning and probate law as defined herein (see § I G). Applicants must show such substantial involvement and special competency in estate planning and probate law during each of such five (5) years by providing information as may be required by the Board regarding both the following categories:

1. Estate Planning

Requires, to the satisfaction of the Board, an adequate involvement in a substantial portion of the activities described in each of the following paragraphs:

- (a) Counseled persons in estate planning, including giving advice with respect to wills, powers of attorney, trusts, transfers, business arrangements and agreements, and other matters primarily involving estate planning, including but not limited to the tax aspects of the activities listed herein.
- (b) Prepared or supervised the preparation of estate planning instruments, e.g., simple and complex wills, including provisions for testamentary trusts, marital deduction, and elections; revocable and irrevocable inter vivos trusts, including short-term and minor trusts; business planning agreements including stock agreements; and estate and gift tax liability and returns including representations before the Internal Revenue Service in connection with such liability or returns.

2. Estate Administration (Probate). Requires, to the satisfaction of the Board, an adequate involvement in a substantial portion of the activities described in each of the following paragraphs:

- (a) Handled, advised, or supervised with respect to the probate and/or administration of decedent's estates, trusts, guardianships, conservatorships, determinations of heirship, will contests, construction suits, and court proceedings held thereon.
- (b) Prepared, reviewed, supervised, or gave advice concerning the preparation of Federal Estate Tax Returns, state inheritance/estate tax returns, and U.S. Fiduciary Income Tax returns, including representation before the Internal Revenue

Service, South Carolina or other state taxing authorities, or the courts in connection with such tax returns and related tax controversies.

C. CONTINUING LEGAL EDUCATION - MINIMUM REQUIREMENTS

During each of the five (5) years preceding application, applicants must have earned credit for not less than twelve (12) hours of continuing legal education in approved courses or programs dealing with estate planning and probate law. For this purpose "approved courses or programs" shall mean courses/programs accredited by the Board for the estate planning and probate law specialty or courses/programs that would qualify for such accreditation.

D. EXAMINATION

Applicants for certification must pass an oral interview/examination and upon successful completion thereof, must take and pass a written examination to demonstrate sufficient knowledge, proficiency, and experience in estate planning and probate law to justify the representation of special competency to the legal profession and to the public. The written examination shall be administered only once during each calendar year, provided applications are pending, at a time and place to be determined by the Board, giving due consideration to the convenience of such applicants.

E. FEES

Applicants shall timely pay the fees established from time to time by the Board, including but not limited to application fees, filing fees, examination fees, and certification fees.

#### F. FAILURE TO FURNISH INFORMATION; MISREPRESENTATION

Certification or recertification may be denied because of an applicant's failure to furnish requested information or because of misrepresentation of any material fact requested by the Board.

### III. REQUIREMENTS FOLLOWING CERTIFICATION

- A. During each annual reporting period all certified specialists in estate planning and probate law shall complete not less than fifteen (15) hours of approved specialty continuing legal education. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty (see § IV C which requires one hundred (100) hours of CLE credit for recertification). Provided, however, that for reporting period 2008-2009, a minimum of twelve (12) hours of approved specialty continuing legal education shall be required.
- B. A certified specialist must report annually to the Commission his/her compliance with § III A and pay such filing fees, including late fees, as the Commission may from time to time prescribe. Failure to file and/or pay required fees may result in suspension from the practice of law in accordance with Commission Regulations.
- C. During the period of certification, all certified specialists must continue to practice law and to be substantially involved in the practice of estate planning and probate law (see § II A & B, regarding the meaning of "practice of law" and "substantially involved in the practice of estate planning and probate law"). Should any certified specialist cease to practice law or to be substantially involved in the practice of estate planning and probate law, he/she shall promptly notify the Board for such action with respect to decertification as the Board shall deem to be appropriate. The failure of a certified specialist to notify the Board that he/she is no longer engaged in the practice of law or substantially involved in the practice of estate planning and probate law may constitute grounds for decertification of the individual concerned.

### IV. RECERTIFICATION

- A. Renewal of certification under the program shall be required every five (5) years.
- B. Applicants must demonstrate their continuing substantial involvement and special competency in the practice of estate planning and probate law as may be required by the Board. Provided, however, that requirements for recertification shall not exceed the requirements for original certification except as noted in § IV C, below.

- C. To qualify for recertification, applicants must demonstrate the completion of a minimum of one hundred (100) hours of approved specialty continuing legal education in the five (5) years since their original or latest certification. Provided, however, that for applications for recertification received prior to January 1, 2011, only ninety (90) hours of approved specialty continuing legal education shall be required.

#### V. REVOCATION OF CERTIFICATION

The Board may revoke the certification of any lawyer if the certification program for this field is terminated or if it is determined after hearing, on appropriate notice, that:

- A. Certification was granted contrary to the Board's Standards and Procedures, Commission Regulations, or South Carolina Appellate Court Rules; or
- B. Certification was granted to a lawyer who was not eligible for certification or who made any false representation; or
- C. A certified lawyer has failed to abide by all Board standards and procedures, Commission regulations, and South Carolina Appellate Court Rules, as amended from time to time; or
- D. A certified lawyer has failed to meet the continuing legal education requirements of § III A or to file the annual report and/or pay the fees prescribed by § II E and § III B; or
- E. A certified lawyer no longer meets the minimum standards for certification established by the Board's standards and procedures, including practice of law and substantial involvement requirements (see § II A & B).

#### VI. WAIVERS

In cases of rare and unusual circumstances, the Board may waive compliance with any of the standards herein for the purpose of certifying or recertifying an individual as a specialist in estate planning and probate law except that a waiver may not be granted to certify an individual who has not practiced law for at least three (3) years or to excuse any applicant from the requirement to take and pass a written examination. In any case in which a waiver is granted pursuant to this section, notification to the Court recommending certification or recertification shall indicate that a waiver has been granted and will specify the reason(s) therefor.

## VII. EFFECTIVE DATE

These Standards and Procedures shall be effective October 31, 1990, or whenever approved by the South Carolina Supreme Court, whichever date is later, and supersede all prior Estate Planning and Probate Law Specialization Advisory Board Standards and Procedures for Certification, Recertification, and Decertification.