Symposium: Celebrating Twenty Years of Continuing Legal Education: The Art and Science of Educating Attorneys

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Recommended Citation
Available at: http://scholar.valpo.edu/vulr/vol40/iss2/9

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HISTORY OF ATTORNEY SPECIALIZATION IN INDIANA

Melissa S. May*

The ability to represent oneself as a “specialist” in a specific field of law has been accepted by the Indiana Supreme Court since 1995, but it has not been actively embraced by the majority of Indiana attorneys. This Article examines the history of attorney specialization in Indiana, compares some experiences in states where certification has proven particularly successful, and addresses the future.

An early writer to consider attorney specialization was Alfred Z. Reed. In 1921, he published for The Carnegie Foundation for the Advancement of Teaching, Training for the Public Profession of the Law. Reed stated:

[As] there seems to be no practicable means of reducing the volume of the law in the near future, and nobody wants the law to be less thoroughly taught, the only available remedy is in the direction of specialized schools leading into specialized branches of the profession. This development will probably not occur very soon.1

Reed was prophetic, though the motivation and mechanism for specialization has come primarily from within the profession rather than from specialized law schools.

Fast forward to 1952, when the American Bar Association (“ABA”) formed the Committee on Continuing Specialized Legal Education to study the situation of attorney specialization and make recommendations.2 That committee reported in 1954:

[For a long time many lawyers have, of necessity, limited their practice to certain branches of law. The increasing complexity of the law and the demand of the public for more expertness on the part of the lawyer has

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* Judge, Indiana Court of Appeals.


2 See GLENN GREENWOOD & ROBERT F. FREDERICKSON, SPECIALIZATION IN THE MEDICAL AND LEGAL PROFESSION 163 (Callaghan 1964).
in the past few years brought about specialization on an increasing scale.\textsuperscript{3}

In 1967, the ABA, in conjunction with the American Bar Foundation ("ABF"), created its third committee on specialization.\textsuperscript{4} The monograph that documented this committee’s actions recognized and articulated a number of reasons for attorney specialization, including improved quality of legal services as a lawyer’s focus narrows and easier access to lawyers if the lawyers are allowed to advertise their practice areas.\textsuperscript{5} After considering the feedback it received, the ABA committee proposed encouragement and assessment of pilot programs in individual states rather than pursuit of a national plan.\textsuperscript{6}

That approach seemed successful. By February of 1975, all but ten states had established committees to work on the specialization issue.\textsuperscript{7} The first state to adopt specialization was California, where a plan was adopted by the California State Bar in 1970 and approved by the state supreme court in 1972.\textsuperscript{8} New Mexico was next, adopting a plan in 1973.\textsuperscript{9} Florida followed in 1974,\textsuperscript{10} and Texas in 1975.\textsuperscript{11}

In 1977, the United States Supreme Court decided Bates v. State Bar of Arizona.\textsuperscript{12} That opinion, which held that lawyers could advertise, brought the issue of attorney specialization to the forefront.\textsuperscript{13} The bar responded quickly. The ABA proposed guidelines for lawyer advertising the same year Bates was decided.\textsuperscript{14} In Indiana, the Indiana

\begin{itemize}
  \item \textsuperscript{3} See Model Code of Prof’l Responsibility Canon 2 n.23 (1983), available at http://www.law.cornell.edu/ethics/aba/mcpr/NOTES.HTM (quoting Report of the Special Committee on Specialization and Specialized Legal Services, 79 A.B.A. Rep. 582, 584 (1954)).
  \item \textsuperscript{5} See id. at 278 (citing Barlow F. Christensen, Specialization 3, 6 (tent. draft 1967)).
  \item \textsuperscript{6} See id. at 280.
  \item \textsuperscript{8} See Kilpatrick, supra note 4, at 274.
  \item \textsuperscript{9} See John M. Brumbaugh & Tori Jo Wible, Certification from a National Perspective, 77 Fla. Bar. J. 30, 31 (2003).
  \item \textsuperscript{10} Id.
  \item \textsuperscript{11} See Kilpatrick, supra note 4, at 284 (citing Legal Specialization Comes to Texas, 38 Tex. B.J. 235 (1975)).
  \item \textsuperscript{12} 433 U.S. 350 (1977).
\end{itemize}
State Bar Association Advertising Committee revised the ABA guidelines to fit within Indiana’s Code of Professional Responsibility.\textsuperscript{15} The revised guidelines were submitted to the House of Delegates of the Indiana State Bar Association at the 1977 fall meeting and were approved with some changes.\textsuperscript{16} The Indiana Supreme Court adopted those revised guidelines effective January 1, 1978.\textsuperscript{17}

In the meantime, the Indiana Judicial Council on Legal Education and Competence at the Bar began to survey and evaluate specialization programs in other states in an effort to determine whether a specialization program was appropriate for Indiana.\textsuperscript{18} As a part of this effort, Judge Robert H. Staton of the Indiana Court of Appeals published five articles in the Indiana State Bar Association Journal, \textit{Res Gestae}, addressing specialization in other states and countries and explaining the rationale behind attorney specialization.\textsuperscript{19}

The ABA continued to respond to interest in attorney specialization, creating a Model Plan of Specialization.\textsuperscript{20} This plan outlined a certification program that a state’s highest court could direct. The ABA provided the states with additional information when it promulgated the Model Standards for Specialty Areas in 1990.\textsuperscript{21}

It was not until 1990, after the United States Supreme Court decided \textit{Peel v. Illinois Disciplinary Commission},\textsuperscript{22} that significant steps were taken in Indiana with respect to the recognition of attorney specialization. Peel was licensed to practice law in Illinois and other states, and he held a “Certificate in Civil Trial Advocacy” from the National Board of Trial Advocacy (“NBTA”).\textsuperscript{23} Peel utilized a professional letterhead that included the notation “Certified Civil Trial Specialist By the [NBTA].”\textsuperscript{24} The Attorney Registration and Disciplinary Commission of Illinois filed

\begin{footnotes}
\item[15] See Staton, supra note 13, at 249.
\item[16] Id.
\item[17] Id.
\item[19] See id. at 196, 246, 294, 380.
\item[20] See Kilpatrick, supra note 4, at 286 (citing A.B.A. Standing Committee on Specialization, Model Plan of Specialization (1983)).
\item[21] See id. at 286 (citing A.B.A. Standing Committee on Specialization, Model Standards of Specialization (1990)).
\item[22] 496 U.S. 91 (1990).
\item[23] Id. at 96. The NBTA has certified attorneys since it was founded in 1977. See National Board of Trial Advocacy, About the NBTA, http://www.nbтанet.org/public/misc/about-nbta.shtml (last visited Dec. 16, 2005).
\item[24] \textit{Peel}, 496 U.S. at 96.
\end{footnotes}
a complaint alleging that Peel, by using the letterhead that included the notation “Certified Civil Trial Specialist By the [NBTA],” held himself out as a certified legal specialist in violation of Rule 2-105(a)(3) of the Illinois Code of Professional Responsibility. The Commission recommended censure, and the Illinois Supreme Court adopted that recommendation, concluding that Peel’s First Amendment rights were not violated. The United States Supreme Court reversed, holding that a lawyer has a constitutional right, under the standards applicable to commercial speech, to advertise his or her certification as a trial specialist by NBTA.

In June of 1991, the Lawyer Certification Study Committee of the Indiana House of Delegates (“Committee”) concluded that continued resistance to attorney specialization and advertising was futile. Its report and Study Committee Rules Proposal stated: “The Committee has concluded that the unsettled state of law regarding the status of specialty certifying organizations in Indiana and other states left in the wake of the Peel decision is professionally unacceptable and not in the public interest.” The Committee determined that specialization could successfully be “accomplished as it has been accomplished in the other professions—through largely self-regulating and sometimes competing associations which are free to develop their own techniques for satisfying broadly conceived and generally applicable performance-oriented practice standards.” It further noted its report was not to be perceived as an attempt to sell the concept of lawyer specialization to the lawyers of Indiana. Instead, it was to provide a vehicle for regulating lawyer specialty advertising by means of an accreditation process. The Committee recommended that the Indiana Supreme Court adopt a proposed Admission and Discipline Rule 30, which would establish a panel of twelve members to be appointed by the supreme court. This would, as a practical matter, establish a new Indiana Supreme Court agency. The House of Delegates adopted the report of the Committee in the fall of 1991. It sent the report to the Indiana Supreme Court, but the court took no official action at that time.

25 Id. at 97.
26 Id. at 98.
27 Id. at 111.
28 Indiana State Bar Association, Report of the Lawyer Certification Study Committee to the House of Delegates 1 (June 30, 1991) (on file with the Indiana State Bar Association).
29 Indiana State Bar Association, Lawyer Certification Study Committee Rules Proposal 2 (June 20, 1991) (on file with the Indiana State Bar Association).
30 See supra note 28.
31 See supra note 29.
In 1994, the Indiana State Bar Association (“ISBA”) Lawyer Certification Study Committee (“ISBA Committee”) recommended adoption of an ISBA program for accreditation of lawyer certifying organizations. 32 Apparently, after learning the Indiana Supreme Court was still considering its initial report, the ISBA Committee decided not to submit a separate ISBA proposal to the House of Delegates.

The Indiana Supreme Court did not follow the ISBA Committee’s recommendation. Instead, it placed attorney specialization under the purview of the Commission on Continuing Legal Education. On December 5, 1994, the Indiana Supreme Court adopted Indiana Admission and Discipline Rule 30. That rule, which took effect February 1, 1995, set forth the Indiana Certification Review Plan. It provides:

Section 1. Purpose. The purpose of this rule is to regulate the certification of lawyers as specialists by independent certifying organizations (ICO’s) to:
(a) enhance public access to and promote efficient and economic delivery of appropriate legal services;
(b) assure that lawyers claiming special competence in a field of law have satisfied uniform criteria appropriate to the field;
(c) facilitate the education, training and certification of lawyers in limited fields of law;
(d) facilitate lawyer access to certifying organizations;
(e) expedite consultation and referral; and
(f) encourage lawyer self-regulation and organizational diversity in defining and implementing certification of lawyers in limited fields of law.

Section 2. Power of Indiana Commission for Continuing Legal Education (CLE). CLE shall review, approve and monitor organizations (ICO’s) which issue certifications of specialization to lawyers practicing in the State of Indiana to assure that such organizations

satisfy the standards for qualification set forth in this rule.

Section 3. Authority of CLE. In furtherance of the foregoing powers and subject to the supervision of and, where appropriate, appeal to the Supreme Court of Indiana, CLE shall have authority to:

(a) approve or conditionally approve appropriate organizations as qualified to certify lawyers as specialists in a particular field or closely related group of fields of law;
(b) adopt rules and policies reasonably needed to implement this rule and which are not inconsistent with its purposes;
(c) review and evaluate the programs of ICO’s to assure continuing compliance with the purposes of this rule, the rules and policies of CLE, and the qualification standards set forth in Section 4;
(d) deny, suspend or revoke the approval of an ICO upon CLE’s determination that the ICO has failed to comply with the qualification standards or rules and policies of CLE;
(e) keep appropriate records of those lawyers certified by ICO’s approved under this rule;
(f) cooperate with other organizations, boards and agencies engaged in the field of lawyer certification;
(g) enlist the assistance of advisory committees to advise CLE; and
(h) make recommendations to the Indiana Supreme Court concerning:
(1) the need for and appointment of a Director and other staff, their remuneration and termination;
(2) an annual budget;
(3) appropriate fees for applicant organizations, qualified organizations and certified specialists; and
(4) any other matter the Indiana Supreme Court requests.

Section 4. Qualification Standards for Independent Certifying Agencies.
(a) The ICO shall encompass a comprehensive field or closely related group of fields of law so delineated and identified (1) that the field of certification furthers the purpose of the rule; and (2) that lawyers can, through intensive training, education and work concentration, attain extraordinary competence and efficiency in the delivery of legal services within the field or group.

(b) The ICO shall be a non-profit entity whose objectives and programs foster the purpose of this rule and which is governed by lawyers who, in the judgment of CLE, are experts in the field of certification.

(c) The ICO shall have a substantial continuing existence and demonstrable administrative capacity to perform the tasks assigned it by this rule and the rules and polices of CLE.

(d) The ICO shall adopt, publish and enforce open membership and certifications standards and procedures which do not unfairly discriminate against members of the Bar of Indiana individually or collectively.

(e) The ICO shall provide the following assurance to the continuing satisfaction of CLE with respect to its certified members:

(1) that members have extraordinary competence and efficiency in the field of certification that is
   (i) comprehensive;
   (ii) objectively demonstrated;
   (iii) peer recognized; and
   (iv) reevaluated at appropriate intervals;

(2) that members actively and effectively pursue the field of certification as demonstrated by continuing education and substantial involvement; and

(f) The ICO shall cooperate at all times with CLE and perform such tasks and duties as CLE may require to implement, enforce and assure
compliance with and effective administration of this rule.

Section 5. Qualification Standards for Certification.
(a) To be recognized as certified in a field of law in the state of Indiana, the lawyer must be duly admitted to the bar of this state, in active status, and in good standing, throughout the period for which the certification is granted.
(b) The lawyer must be certified by an ICO approved by CLE, and must be in full compliance with the Indiana Bar Certification Review Plan, the rules and policies of the ICO and the rules and policies of CLE.

Section 6. Privileges Conferred and Limitations Imposed.
(a) A lawyer who is certified under this rule may communicate the fact that the lawyer is certified by the ICO as a specialist in the area of law involved. The lawyer shall not represent, either expressly or impliedly, that the lawyer’s certification has been individually recognized by the Indiana Supreme Court or CLE, or by an entity other than the ICO.
(b) Certification in one or more fields of law, shall not limit a lawyer’s right to practice in other fields of law.
(c) Absence of certification in a field of law shall not limit the right of a lawyer to practice in that field of law. Participation in the Indiana Bar Certification Review Plan shall be on a voluntary basis.
(d) The number of certifications which a lawyer may hold shall be limited only by the practical limits of the qualification standards imposed by this rule and the rules and policies of the ICO.
(e) An ICO shall not be precluded from issuing certificates in more than one area of certification but in such event, the ICO’s qualifications shall be judged and determined separately as to each such area of certification. To the extent
consistent with the purpose of the Indiana Bar Certification Review Plan, any number of ICO’s may be approved to issue certifications in the same or overlapping fields or groups of closely related fields of law.

Section 7. Fees. To defray expenses of the Indiana Bar Certification Review program, the Indiana Supreme Court may establish and collect reasonable and periodic fees from the ICO’s and from applicants and lawyers certified under the Indiana Bar Certification Review program.

Section 8. Appeal. CLE action or inaction may be appealed as abuse of authority under the Rules of Procedure applicable to original actions in the Indiana Supreme Court.33

The Indiana CLE Commission instituted Standards for Accreditation of Independent Certification Organizations, which are appended hereto as Appendix 1. Attached as Appendix 2 are the ABA Standards for Accreditation. These standards are similar, but there are differences. The ABA requires attorneys intending to be specialists to exhibit an “enhanced level of skill and expertise” in that particular area.34 However, the Indiana Standards require “extraordinary competence and efficiency in the area of law or practice” for the area in which certification is sought.35 The ABA requires the attorney to devote twenty-five percent of his time to the area in which specialization is sought.36 In contrast, the Indiana Standards require the attorney to devote at least one-third of his practice to the area of specialization.37

Once Admission and Discipline Rule 30 was enacted, the Indiana CLE Commission immediately began work on an application process to be available when the rule took effect.38 From February of 1995 to

33 INDIANA ADMISSION & DISCIPLINE R. 30.
34 A.B.A. Standards for Specialty Certification Programs for Lawyers § 1.01 (1999).
37 Indiana Commission for Continuing Legal Education Standards for Accreditation of Independent Certification Organizations § 4.06(A) (1997).
38 Most, if not all, of the following information was provided by Julia L. Orzeske, Executive Director of the Indiana Commission on Continuing Legal Education, whose
October of 1996, applications were received from the NBTA in the areas of family, civil, and criminal trial advocacy; the National Elder Law Foundation ("NELF"),\(^39\) the American Bankruptcy Board of Certification ("ABC"),\(^40\) the Commercial Law League of America,\(^41\) and the Indiana Legal Certification Institute. As the applications were received and reviewed, it became apparent that the CLE Commission needed standards by which to measure the information provided in the applications. Standards were drafted and the original applications were returned to the applicants. This procedure was completed in September of 1997, and the applicants were invited to apply using the revised application packet.

In December of 1997, NELF submitted its application for specialty certification in elder law. In February of 1998, NBTA applied for specialties in civil and criminal trial advocacy. At that point, the CLE Commission realized it would need to call on experts in those fields in order to properly review the applications. On June 17, 1998, a panel was appointed to advise the CLE Commission on various issues, primarily the adequacy of the testing the applicants provided.

With the assistance of the advisory panel, the CLE Commission accredited NELF on August 24, 1998. NBTA was accredited for civil and criminal trial advocacy on the same day. The ABC submitted applications for specialization in consumer bankruptcy and business bankruptcy. It was approved as an ICO in both specialties on August 19, 1999. The ABC subsequently submitted an application in the area of Creditors’ Rights, which was approved effective January 1, 2003.\(^42\)

On October 31, 2003, eleven attorneys were certified as specialists in consumer bankruptcy, but by July 15, 2005, that number had fallen to eight. Out of the twenty-three originally certified specialists in business

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\(^{42}\) The areas of patent law and admiralty law, commonly known as specialties and historically referred to as such, are not addressed in Admission and Discipline Rule 30, nor has any organization sought to certify them as specialties under the Indiana Standards. This raises a question as to whether, in light of Rule 30, attorneys practicing in those areas of law may still be considered “specialists.”
bankruptcy, only twenty-one were left in 2005. There have always been six specialists in creditor’s rights. There are fifteen lawyers certified as specialists in elder law. The same number are certified in civil trial work, and one specialist is listed for criminal trial work. The biggest change in attorney specialization in Indiana took place when the Family Law Section of the ISBA decided to form its own ICO. Its initial accreditation period commenced January 1, 2003, and currently sixty lawyers are certified as family law specialists.

The low number of Indiana attorneys certified as specialists—126—indicates specialization in Indiana has not been received with the same enthusiasm as it has in other states. By comparison, the Texas Board of Specialization boasts over 6,700 attorneys certified in twenty specialty areas. Florida has over 4,000 certified legal specialists, also in twenty specialty areas. As of May 1, 2005, California had 3,916 legal specialists in eight specialty areas. By the end of 2004, there were 30,743 certified specialists in the United States. Twenty-five percent of those certified specialists hold specialties in civil trial work. Nationally, there are forty-four specialty certification fields in state and private programs. These include:

- Accounting Professional Liability
- Administrative
- Admiralty & Maritime
- Antitrust
- Aviation
- Bankruptcy

One possible difficulty in the area of trial law specialization is the general decline in the number of jury trials. One prerequisite for certification as a civil or criminal trial law specialist is a certain number of trials over a certain number of years. This may be a reason why more civil and criminal trial lawyers in Indiana have not sought certification as specialists.

Originally, fifty-five lawyers were certified as family law specialists. As the result of an examination in August of 2005, five more lawyers were certified. Information received from Deborah Farmer, Co-Chair of the ISBA Family Law Section.


Id. at 5.
Given Indiana’s relative lack of certified specialists and specialties, one might wonder what value certification is perceived to hold. The ABA’s activities in the specialization area were justified primarily by a stated concern for the quality of legal services provided to the public.\footnote{See supra note 5 and accompanying text.} Section 1 of the ABA Model Plan sets forth three goals of certification:

\begin{quote}
[T]o assist in the delivery of legal services to the public by:
\begin{enumerate}
\item Providing greater access by the public to appropriate legal services;
\item Identifying and improving the quality and competence of legal services; and
\item Providing appropriate legal services at reasonable cost.\footnote{See Kilpatrick, supra note 4, at 291.}
\end{enumerate}
\end{quote}

But how does the public learn someone is a certified specialist? The author’s review of the November, 2004, Indianapolis SBC Yellow Pages revealed less than ten lawyers who advertised that they are certified in a specialty.\footnote{This review is not represented as exhaustive; there are 101 pages devoted to attorney advertising in the current Indianapolis SBC Yellow Pages.} Presumably, there are other lawyers listed in the Yellow Pages who are certified specialists but who do not offer that information. Some of these certified specialists might utilize a referral type system, i.e., referring cases only to another certified specialist. At any rate, the lack of growth in the number of attorneys certified in specialties other than family law appears to indicate that attorneys practicing in Indiana do not value the term “certified specialist,” at least as an advertising tool.

The response when the Family Law Section of the ISBA submitted an application for an ICO was more encouraging. A team of dedicated family law practitioners, most if not all of which were already members of the American Academy of Matrimonial Lawyers,\footnote{See American Academy of Matrimonial Lawyers, http://www.aaml.org (last visited Jan. 19, 2006).} spent hours putting together an application for an ICO and preparing and revising the tests necessary to obtain that certification. It is hoped that the section’s obvious success will be mirrored by other sections of the ISBA seeking to certify specialists in their own areas.

It is this writer’s view that unless and until Indiana attorneys perceive certification as a specialist in their particular area of law as...
being beneficial to their practice, there will not be significant growth in the numbers of certified attorneys. National and state bar associations, the certifying organizations, and the courts before which certified specialists practice appear to share the belief that specialization can substantially advance the public interest. Then-Chief Justice Burger commented over fifteen years ago, with respect to trial lawyers, that “some system of certification for trial advocates is an imperative and a long overdue step.” In his view, the dearth of certification programs “helped bring about the low state of American trial advocacy and a consequent diminution in the quality of our entire system of justice.” He expressly endorsed “certification of the one crucial specialty of trial advocacy that is so basic to a fair system of justice and has had historic recognition in the common law system.”

That same sentiment can be expressed as to other areas of practice that lend themselves to specialization. An attorney who has taken the time to submit an application, obtain referral letters, go through an often-burdensome education and peer review process, and take a test to qualify as a specialist in his or her chosen field of law should be able to certify to the world that he or she is a specialist. That hard-earned certification should mean something within the profession and to the public at large.

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56 Id. at 230.
57 Id. at 240.
APPENDIX ONE
INDIANA COMMISSION FOR CONTINUING LEGAL EDUCATION
STANDARDS FOR ACCREDITATION OF INDEPENDENT CERTIFICATION ORGANIZATIONS

SECTION 1: POLICY STATEMENT

1.01 This document establishes standards by which the Indiana Commission for Continuing Legal Education ("Commission") will accredit specialty certification programs for lawyers in particular fields of law. The Standards require that an accredited organization through its attorney specialization plan demonstrate that its plan will accomplish the purposes of Indiana Admission and Discipline Rule 30 Sec. 1.

The Standards are designed to enable the Commission to evaluate thoroughly the objectives, standards and procedures of Applicants.

SECTION 2: DEFINITIONS

2.01 A. "Applicant" means an independent certifying organization ("ICO") which applies to the Commission for accreditation or re-accreditation under these Standards.

B. "Commission" means the Indiana Commission for Continuing Legal Education.

C. "Independent Certifying Organization" means an organization, bar association, group, or other entity which is non-profit and certifies or intends to certify lawyers as specialists.

D. "Standards" means the Indiana Commission for Continuing Legal Education Standards For Accreditation and Reaccreditation of Specialty Certification Programs For Lawyers as promulgated or amended.
SECTION 3: AUTHORITY

3.01 The authority to revise and amend these requirements is vested in the Commission, subject to approval by the Indiana Supreme Court. The authority to grant and withdraw accreditation or to grant conditional accreditation and the authority to grant and withdraw re-accreditation or to grant conditional re-accreditation is vested in the Commission.

SECTION 4: REQUIREMENTS FOR ACCREDITATION OF ICO’S

In order to obtain accreditation by the Commission for a specialty certification program, an Applicant must demonstrate that the program operates in accordance with the following standards:

4.01 Purpose of Organization. The Applicant must demonstrate that one of its primary purposes is the identification of lawyers who have extraordinary competence and efficiency in the area of law or practice for which specialist certification is being issued. If the identification of lawyers for which specialist certification is being sought is not the primary purpose of the Applicant, but is simply one of the primary purposes, the Applicant must also show that its certification program has as a goal the development and improvement of the professional competence of lawyers in the area of law or practice for which specialist certification is being sought.

4.02 Organizational Prerequisites. Any program designed to certify lawyers as specialists has a continuing responsibility to those it certifies to maintain the integrity and the value of the specialty designation.

The primary criteria which will be used in determining whether this responsibility has been met are:

A. a history of adequate financing during the three (3) years preceding the filing of the application. If the Applicant is newly formed, this criteria will be applied to a parent or sponsoring organization, or to individual founders, if no founding organization is involved;

B. the existence of a budget financial plan for three (3) years following a grant of accreditation should it be made;
C. the presence of persons retained by or on the governing board, evaluation committees and staff of the organization who are qualified by experience, education and background to carry out the program of certification operated by the Applicant, including persons with a background in evaluating the validity and reliability of examinations, as well as experienced practitioners in the areas of law in which the organization conducts certification programs;

D. management, administrative and business practices which allow the Applicant to operate its certification program effectively and provide efficient service to lawyers who submit applications for certification. The processes and procedures used in the certification process should include safeguards to ensure unbiased consideration of lawyers seeking certification; and

E. existence of a handbook, guide or manual which outlines the standards, policies, procedures, guidelines for self-study, and application procedures.

4.03. **Decision Makers.** The Applicant shall be governed by lawyers who, in the judgment of the Commission, are experts in the field of certification. For the purpose of this criterion, a person may be deemed to be an expert in the field of certification if he or she is:

A. certified in the area of law by an organization accredited by this Commission, or another state or territory of the United States, or the District of Columbia; or

B. meets the qualifications set out in Section 4.06(A) of the Standards.

4.04. **Uniform Applicability of Certification Requirements and Non-Discrimination.** The Applicant’s documents and records submitted in conjunction with its application for accreditation will be examined to ensure that the requirements for granting certification are clear and easily applied.

A. The Applicant shall adopt, publish and enforce open membership and certifications standards and procedures which do not unfairly discriminate against
the members of the Bar of Indiana individually or collectively.

B. Membership in any organization or completion of educational programs offered by any specific organization shall not be required for certification.

C. Applicants shall not discriminate against any lawyers seeking certification on the basis of race, religion, gender, sexual orientation, disability, or age. This paragraph does not prohibit an Applicant from imposing reasonable experience requirements on lawyers seeking certification or re-certification.

4.05 Definition and Number of Specialties. An Applicant shall specifically define the specialty area or areas in which it proposes to certify lawyers as specialists.

A. Each specialty area in which certification is offered must be an area in which significant numbers of lawyers regularly practice. Specialty areas shall be named and described in terms which are understandable to the potential users of such legal services, and in terms which will not lead to confusion with other specialty areas. The Commission reserves the right to specify the name to be used to designate a specialty area.

B. An Applicant may seek accreditation to certify lawyers in more than one specialty area, but in such event, the organization shall be evaluated separately with respect to each specialty program. Any number of ICO’s may be approved to issue certifications in the same or overlapping fields or groups of closely related fields of law, so long as the approval is consistent with the purposes set out in Ind. Admis. Disc. Rule 30.

C. An Applicant shall propose to the Commission a specific definition of each specialty area in which it seeks accreditation to certify lawyers as specialists.

4.06 Certification Requirements. The following shall be required by the Applicant for certification of lawyers as specialists.
A. **Evidence of Substantial Involvement in the Practice Area.**
   The Applicant must require that a lawyer seeking certification make a satisfactory showing of experience through substantial involvement in the specialty area. Substantial involvement generally includes the type and number of cases or matters handled and the amount of time spent practicing in the specialty area. In order to meet the Standard, the Applicant’s certification criteria must require that the time spent practicing the specialty be at least one-third (1/3) of the total practice of a lawyer engaged in a normal full-time practice throughout the three-year period immediately preceding the lawyer’s application.

B. **Peer Review.** The Applicant must require that a lawyer seeking certification submit the names of at least five (5) references who are attorneys, or judges where appropriate, who are knowledgeable regarding the practice area and are familiar with the competence of the lawyer.

1. The Applicant’s procedures must provide that the Applicant, not the lawyer seeking certification, sends the reference forms to potential references.

2. The reference forms should inquire into the respondent’s areas of practice, the respondent’s familiarity with both the specialty area and with the lawyer seeking certification, and the length of time that the respondent has been practicing law and has known the lawyer seeking certification. The form should also inquire about the qualifications of the lawyer seeking certification in various aspects of the practice and, as appropriate, the lawyer’s dealings with judges and opposing counsel.

3. The materials provided to a lawyer seeking certification must specify that the lawyer may not submit as a reference the name of any lawyer or judge who is related to the lawyer
seeking certification or currently engaged in legal practice with that lawyer.

4. The Applicant should reserve the right to seek and consider reference forms from persons of the organization's own choosing.

C. Written Examination. The Applicant must require that a lawyer seeking certification pass a written examination of suitable length and complexity. The examination must test the knowledge and skills of the substantive and procedural law in the specialty area, substantially consist of questions not previously used on other examinations, and shall include professional responsibility and ethics as it relates to the particular specialty. The Commission may appoint a panel to review the substantive content of the examination and the procedures for administering the examination. The following factors will be used to judge the suitability of the examination used by the Applicant:

1. evidence that the examination’s pass/fail levels are established in a manner that is generally accepted as being valid.

2. evidence of both reliability and validity for each form of the examination. Reliability is the consistency or replicability of test results. Validity requires that the content and emphasis of the examination proportionately reflect the knowledge and skills needed for an enhanced level of skill and expertise in the specialty area;

3. evidence of periodic review of the examination to ensure relevance to knowledge and skills needed in the specialty area as the law and practice methods develop over time; and

4. evidence that appropriate measures are taken to protect the security of all examinations.

D. Educational Experience. The Applicant must require that a lawyer seeking certification has completed a minimum of thirty-six (36) hours of participation in educational
activities in the specialty area in the three (3) year period preceding the lawyer’s application for certification.

1. The Applicant may allow a lawyer seeking certification to meet this requirement through any of the following means, including a combination of them:

   a. attending programs of continuing legal education approved by this Commission;

   b. teaching courses or seminars in the specialty area approved by this Commission;

   c. participating as panelist, speaker or workshop leader at educational or professional conferences covering the specialty area approved by this Commission; or

   d. writing published books or articles concerning the specialty area.

2. The Applicant should require a lawyer seeking certification to provide evidence showing that the programs, courses, seminars, conferences and publications listed above contain sufficient intellectual and practical content so as to increase a lawyer’s knowledge and ability in the specialty area.

E. Good Standing. A lawyer seeking certification must be duly admitted to the bar of this state, in active status, and in good standing, throughout the period for which the certification is granted.

G. Supporting Documents. The application for accreditation must be accompanied by all of the following supporting documents:

1. the Applicant’s governing documents, including articles of incorporation, bylaws, and resolutions of the governing bodies of the Applicant or any parent organization, which resolutions relate to the standards, procedures, guidelines or practices of the Applicant’s certification program;

2. financial information about the Applicant and any supporting parent organization as specified on forms provided by the Commission;

3. biographical summaries of members of the governing board, senior staff and members of advisory panels, including specific information concerning the degree of involvement in the specialty area of persons who review and pass upon applications for certification;

4. materials furnished to lawyers seeking certification, application forms, booklets or pamphlets describing the certification program, peer reference forms, rules and procedures and evaluation guides;

5. copies of examinations given in the past two (2) years, or in the case of new organizations, copies of proposed examinations (in those cases where an organization accepts examination by another entity, copies of such examinations), with evidence of their validity and reliability, such as written examination procedures, including a description of how examination are developed, conducted and reviewed; a description of the grading standards used; and the names of persons responsible for determining pass/fail standards. Actual or proposed written examinations are to be made available on a confidential basis for review by a person
designated by the Commission, with the understanding that the Applicant, at its option, may rule the person who reviews the examination ineligible for certification by the Applicant for a period of three (3) years from the time of such designation;

6. the definition of the specialty or specialties in which the Applicant certifies specialists; and

7. such other materials or information deemed necessary by the accreditation review panel or the Commission.

4.07 Impartial Review. The Applicant must provide evidence that it maintains and publishes a policy providing an appeal procedure for a lawyer seeking certification to challenge the decision of the persons who review and pass upon applications for certification. The policy must provide a lawyer seeking certification the opportunity to present his or her case to an impartial decision maker in the event of denial of eligibility or denial of certification. Impartial decision-makers may include persons associated with the Applicant.

4.08 Requirements for Re-Certification.

A. The Applicant must have in existence or be in the process of developing a plan for periodic re-certification.

B. The period of certification or re-certification may not exceed five years.

C. The plan for periodic re-certification must be designed to measure continued competence and enhance the continued competence of certified lawyers. Re-certification requirements must be at least as stringent as those for initial certification in the areas of substantial involvement, peer review, educational experience and good standing.

D. In cases where a lawyer was certified by the Applicant Organization prior to its accreditation by the Association and such lawyer did not successfully complete a written examination that meets the requirements set out in
Standard 4.06(C), the Applicant Organization must require that the lawyer successfully complete such an examination upon re-certification.

4.09 **Revocation of Certification.** The Applicant must maintain a procedure for revocation of certification, including a requirement that a certified lawyer report his or her disbarment or suspension from the practice of law in any jurisdiction to the Applicant.

**SECTION 5: ACCREDITATION PERIOD AND RE-ACCREDITATION**

5.01 Initial accreditation by the Commission of any Applicant shall be granted for five years.

5.02 To retain Commission accreditation, a certifying organization shall be required to apply for re-accreditation during the period between six and twelve months prior to the end of the fifth year of its initial accreditation period and every five years thereafter. The organization shall be granted re-accreditation upon showing of continued compliance with these Standards.

**SECTION 6: REPORTING**

6.01 An ICO shall be responsible for reporting in writing to the Commission as follows:

A. by April 1 of each calendar year, a report describing the current status of each accredited program, including the names and current addresses of lawyers certified or re-certified as specialists; and

(B) any proposed changes in the organization’s standards, guidelines or criteria for certification, at least sixty (60) days before they are effective.

**SECTION 7: COMMUNICATION OF ACCREDITATION**

7.01 Upon accreditation, an ICO may state that it is accredited by the Commission to certify lawyers in the specialty area(s) under the following conditions:

A. An ICO using this announcement or otherwise referring to its accreditation by the Commission must provide notice to lawyers applying for certification that
accreditation by the Commission indicates solely that the organization’s certification program has met the Commission’s requirements.

B. This announcement must indicate the specialty areas in which accreditation has been granted by the Commission.

7.02 An ICO shall not permit certified lawyers to state or imply that they are certified or accredited by the Commission. An ICO shall actively enforce this prohibition.

SECTION 8: REVOCATION OF ACCREDITATION

8.01 **Grounds for Revocation of Accreditation.** The accreditation of an Accredited Organization shall be revoked if the organization has ceased to exist, or has ceased to operate its certification program in compliance with the Standards.

8.02 **Hearing.** The Commission, on its own or acting upon a Complaint from a third party, may determine that reasonable grounds exist for consideration of revocation of accreditation. In such case, the Commission will schedule the matter for deliberation at one of the commission’s regularly scheduled business meetings. The Accredited Organization will be provided prompt written notice of the meeting and an opportunity to be heard at the meeting.

8.03 **Decision.** If the Commission determines that the Accredited Organization has ceased to exist, or has ceased to operate its certification program in compliance with the Standards, then it will revoke the accreditation.

8.04 **New Application for Accreditation.** An ICO whose accreditation has been revoked may re-apply, at a subsequent time, for accreditation without prejudice. However, the Commission may consider the reasons accreditation was revoked to determine whether the problem requiring revocation is corrected.

8.05 **Voluntary Withdrawal from Accredited Status.** An Accredited Organization may request that its accreditation by the Commission be withdrawn by providing written notice to the chair of the Commission at the offices in Indianapolis.
SECTION 9: DISCLOSURE OF INFORMATION

9.01 Except for the circumstances below, the files, records and documents submitted by an Applicant as part of the accreditation process will be deemed public information.

9.02 An Applicant may request that distribution of its materials by the Commission or any person acting as a panel member or advisor at the request of the Commission be limited to those persons who need the information to fulfill obligations specified in these Rules. In such cases, the Commission will take reasonable steps to honor such a request, but can not assume responsibility for disclosure due to circumstances beyond its immediate control.

9.03 Except as a part of this Commission’s Administration of Rule 30, actual or proposed written examinations submitted will be kept confidential.

SECTION 10: NON-COMPLIANCE WITH GOVERNING RULES OR PROCEDURES

10.01 An Applicant or an ICO that does not comply with these requirements may be denied accreditation or re-accreditation or may have its accreditation revoked.

SECTION 11: INDEMNIFICATION AND HOLD HARMLESS

11.01 ICO’s and Applicants agree to hold and save the Commission, its volunteers, officers, agents and employees harmless from liability of any kind, including costs and expenses, for any suit or damages sustained by any person or property by virtue of an ICO’s or Applicant’s activities relating to accreditation by the Commission.

SECTION 12: AUTHORITY TO IMPLEMENT STANDARDS

12.01 Consistent with these Standards, the Commission shall have the authority to:

A. Interpret these Standards;

B. Adopt rules and procedures for implementing these Standards, and amend such rules and procedures as necessary;
C. Recommend the Supreme Court of Indiana adopt an appropriate fee schedule to administer the Indiana Certification Review Plan.

D. Consider applications by any ICO for accreditation or re-accreditation under these Standards, evaluate those requests in accordance with the Standards and recommend approval by the Commission of such requests when it deems the organization has met the requirements as set forth in these Standards; and

E. Recommend the revocation of accreditation in accordance with the provisions of Section 11.01 of these Standards.

SECTION 13: ADOPTION AND AMENDMENT

13.01 These Standards become effective upon their adoption by the Commission and the approval of the Supreme Court of Indiana;

13.02 The power to approve an amendment to these Standards is vested in the Commission subject to approval of the Supreme Court of Indiana.
APPENDIX TWO
AMERICAN BAR ASSOCIATION
ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR LAWYERS
STANDARDS

SECTION 1: POLICY STATEMENT

1.01 This document establishes standards by which the American Bar Association will accredit specialty certification programs for lawyers in particular fields of law. The Standards require that an accredited organization demonstrate that lawyers certified by it possess an enhanced level of skill and expertise as well as substantial involvement in the specialty area of certification, and that accredited organizations foster professional development. The Standards are designed to enable the Association to evaluate thoroughly the objectives, standards and procedures of Applicants and to facilitate public access to appropriate legal services.

SECTION 2: DEFINITIONS

2.01 As used in these Standards:

A. “Applicant” means a certifying organization which applies to the American Bar Association for accreditation or re-accreditation under these Standards.

B. “Association” means the American Bar Association.

C. “Certifying Organization” means an organization, bar association, group, or other entity which certifies or intends to certify lawyers as specialists, including the Association or subdivision thereof.

D. “Standards” means the American Bar Association Standards For Accreditation Of Specialty Certification Programs For Lawyers.

E. “Standing Committee” means the Standing Committee on Specialization of the Association.
SECTION 3: AUTHORITY

3.01 The authority to grant and withdraw accreditation and to grant re-accreditation is vested in the Association.

3.02 Accreditation under these Standards of any Certifying Organization by the Association is not intended to, and shall not be interpreted to, preempt nor usurp the authority of states to regulate the practice of law, the certification of lawyers as specialists or the approval of organizations which certify lawyers as specialists.

SECTION 4: REQUIREMENTS FOR ACCREDITATION OF CERTIFYING ORGANIZATIONS

In order to obtain accreditation by the Association for a specialty certification program, an Applicant must demonstrate that the program operates in accordance with the following standards:

4.01 Purpose of Organization. The Applicant shall demonstrate that the organization is dedicated to the identification of lawyers who possess an enhanced level of skill and expertise, and to the development and improvement of the professional competence of lawyers.

4.02 Organizational Capabilities. The Applicant shall demonstrate that it possesses the organizational and financial resources to carry out its certification program on a continuing basis, and that key personnel have by experience, education and professional background the ability to direct and carry out such programs in a manner consistent with these Standards.

4.03 Decision Makers. A majority of the body within an Applicant organization reviewing applications for certification of lawyers as specialists in a particular area of law shall consist of lawyers who have substantial involvement in the specialty area.

4.04 Uniform Applicability of Certification Requirements and Nondiscrimination

A. The Applicant’s requirements for certifying lawyers shall not be arbitrary and shall be clearly understood and easily applied. The organization may only certify those lawyers who have demonstrably met each
standard. The requirements shall be uniform in all jurisdictions in which the Applicant certifies lawyers, except to the extent state or local law or regulation imposes a higher requirement.

B. Membership in any organization or completion of educational programs offered by any specific organization shall not be required for certification, except that this paragraph shall not apply to requirements relating to the practice of law which are set out in statutes, rules and regulations promulgated by the government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

C. Applicants shall not discriminate against any lawyers seeking certification on the basis of race, religion, gender, sexual orientation, disability, or age. This paragraph does not prohibit an Applicant from imposing reasonable experience requirements on lawyers seeking certification or recertification.

4.05 Definition and Number of Specialties. An Applicant shall specifically define the specialty area or areas in which it proposes to certify lawyers as specialists.

A. Each specialty area in which certification is offered must be an area in which significant numbers of lawyers regularly practice. Specialty areas shall be named and described in terms which are understandable to the potential users of such legal services, and in terms which will not lead to confusion with other specialty areas.

B. An Applicant may seek accreditation to certify lawyers in more than one specialty area, but in such event, the organization shall be evaluated separately with respect to each specialty program.

C. An Applicant shall propose to the Standing Committee a specific definition of each specialty area in which it seeks accreditation to certify lawyers as specialists. The Standing Committee shall approve, modify or reject any proposed definition and shall promptly notify the Applicant of its actions.
Certification Requirements. An Applicant shall require for certification of lawyers as specialists, as a minimum, the following:

A. Substantial Involvement. Substantial involvement in the specialty area throughout the three-year period immediately preceding application to the certifying organization. Substantial involvement is measured by the type and number of cases or matters handled and the amount of time spent practicing in the specialty area, and require that the time spent in practicing the specialty be no less than twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice.

B. Peer Review. A minimum of five references, a majority of which are from attorneys or judges who are knowledgeable regarding the practice area and are familiar with the competence of the lawyer, and none of which are from persons related to or engaged in legal practice with the lawyer.

1. Type of References—The certification requirements shall allow lawyers seeking certification to list persons to whom reference forms could be sent, but shall also provide that the Applicant organization send out all reference forms. In addition, the organization may seek and consider reference forms from persons of the organization’s own choosing.

2. Content of Reference Forms—The reference forms shall inquire into the respondent’s areas of practice, the respondent’s familiarity with both the specialty area and with the lawyer seeking certification, and the length of time that the respondent has been practicing law and has known the applicant. The form shall inquire about the qualifications of the lawyer seeking certification in various aspects of the practice and, as appropriate, the lawyer’s dealings with judges and opposing counsel.
C. Written Examination. An evaluation of the lawyer’s knowledge of the substantive and procedural law in the specialty area, determined by written examination of suitable length and complexity. The examination shall include professional responsibility and ethics as it relates to the particular specialty.

D. Educational Experience. A minimum of 36 hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer’s application for certification. This requirement may be met through any of the following means:

1. Attending programs of continuing legal education or courses offered by Association accredited law schools in the specialty area;

2. Teaching courses or seminars in the specialty area;

3. Participating as panelist, speaker or workshop leader at educational or professional conferences covering the specialty area; or

4. Writing published books or articles concerning the specialty area.

E. Good Standing. A lawyer seeking certification is admitted to practice and is a member in good standing in one or more states or territories of the United States or the District of Columbia.

4.07 Impartial Review. The Applicant shall maintain a formal policy providing lawyers who are denied certification an opportunity for review by an impartial decision maker.

4.08 Requirements for Re-Certification. The period of certification shall be set by the Applicant, but shall be no longer than five years, after which time lawyers who have been certified must apply for re-certification. Re-certification shall require similar evidence of competence as that required for initial certification in substantial involvement, peer review, educational experience and evidence of good standing.
Revocation of Certification. The Applicant shall maintain a procedure for revocation of certification. The procedures shall require a certified lawyer to report his or her disbarment or suspension from the practice of law in any jurisdiction to the certifying organization.

SECTION 5: ACCREDITATION PERIOD AND RE-ACCREDITATION

5.01 Initial accreditation by the Association of any Applicant shall be granted for five years.

5.02 To retain Association accreditation, a certifying organization shall be required to apply for re-accreditation prior to the end of the fifth year of its initial accreditation period and every five years thereafter. The organization shall be granted re-accreditation upon a showing of continued compliance with these Standards.

SECTION 6: REVOCATION OF ACCREDITATION

6.01 A certifying organization’s accreditation by the Association may be revoked upon a determination that the organization has ceased to exist, or has ceased to operate its certification program in compliance with these Standards.

SECTION 7: AUTHORITY TO IMPLEMENT STANDARDS

7.01 Consistent with these Standards, the Standing Committee shall have the authority to:

A. Interpret these Standards;

B. Adopt rules and procedures for implementing these Standards, and amend such rules and procedures as necessary;

C. Adopt an appropriate fee schedule to administer these Standards;

D. Consider applications by any certifying organization for accreditation or re-accreditation under these Standards, evaluate those requests in accordance with the Standards and recommend approval by the Association of such requests when it deems the organization has met the requirements as set forth in these Standards; and
E. Recommend the revocation of accreditation in accordance with the provisions of Section 6.01 of these Standards.

SECTION 8: ADOPTION AND AMENDMENT

8.01 These Standards become effective upon their adoption by the House of Delegates of the Association.

8.02 The power to approve an amendment to these Standards is vested in the House of Delegates; however, the House will not act on any amendment until it has first received and considered the advice and recommendations of the Standing Committee.