



RESOLUTION OF THE LOUISIANA BOARD OF LEGAL SPECIALIZATION TO AMEND ESTATE PLANNING AND ADMINISTRATION STANDARDS

WHEREAS, the Louisiana Board of Legal Specialization is empowered under Section 3.1C of the Louisiana State Bar Association Plan of Legal Specialization to make recommendations to the House of Delegates of the Louisiana State Bar Association with respect to reasonable and non-discriminatory standards concerning education, experience, proficiency and other relevant matters for granting certificates of special competence to lawyers in defined and designated fields of law;

WHEREAS, a determination was made by the Louisiana Board of Legal Specialization Estate Planning and Administration Advisory Commission that an amendment to the Standards is in order to revise Section III (A)(3) of the Estate Planning and Administration Law Standards, to make them consistent with the amended Tax Law Standards, which the House of Delegates approved on January 20, 2018; and which presently read:

Section III. STANDARDS FOR CONTINUING LEGAL EDUCATION PROGRAMS

A. Program Development and Presentation

...

3. Program content should be current and 70% or more of the program must be related to estate planning and administration law subjects. No specialization continuing legal education credit will be awarded for attending a program which does not satisfy the 70% requirement.

WHEREAS, a determination was made by the Estate Planning and Administration Advisory Commission that the requirement of 70% should be reduced to 50% of a program that must be devoted to estate planning and administration subjects to grant estate planning and administration specialization credit; and furthermore, that if the program does not meet the 50% requirement, that individual sessions will qualify for estate planning and administration credit if 50% or more of the content of the individual session is devoted to estate planning and administration; and that Section III(A)(3) of the Estate Planning and Administration Standards should be amended, consistent with the tax law amendments approved by the House of Delegates on January 20, 2018, as follows:

3. Program content should be current. Estate planning and administration specialization CLE credit will be granted for an entire program if 50% or more of the program is devoted to estate planning and administration subjects. If the program in its entirety does not meet the 50% requirement, individual sessions within the program will qualify for estate planning and administration

specialization CLE credit if 50% or more of the content of the session is devoted to estate planning and administration.

WHEREAS, it is the recommendation of the Louisiana Board of Legal Specialization that it would be appropriate to amend Section III(A)(3) of the Louisiana Board of Legal Specialization Estate Planning and Administration Standards to grant estate planning and administration specialization CLE credit for an entire program if 50% or more of the program is devoted to estate planning and administration subjects. If the program in its entirety does not meet the 50% requirement, individual sessions within the program will qualify for estate planning and administration specialization CLE credit if 50% or more of the content of the session is devoted to estate planning and administration.

NOW, THEREFORE, BE IT RESOLVED that:

The Louisiana Board of Legal Specialization does hereby resolve that there should be an amendment to Section III(A)(3) of the Louisiana Board of Legal Specialization Estate Planning and Administration Standards to grant estate planning and administration specialization CLE credit for an entire program if 50% or more of the program is devoted to estate planning and administration subjects. If the program in its entirety does not meet the 50% requirement, individual sessions within the program will qualify for estate planning and administration specialization CLE credit if 50% or more of the content of the session is devoted to estate planning and administration;

FURTHER, be it resolved that this Resolution be submitted to the House of Delegates of the Louisiana State Bar Association for approval.

Respectfully submitted,

Carl J. Servat III, Chair
Louisiana Board of Legal Specialization

December 14, 2018
New Orleans, Louisiana



LOUISIANA BOARD OF LEGAL SPECIALIZATION ESTATE PLANNING AND ADMINISTRATION STANDARDS

Pursuant to the authority vested in the Louisiana Board of Legal Specialization (the "Board") by the Supreme Court of Louisiana and on the recommendation of the Estate Planning and Administration Advisory Commission (the "Advisory Commission") the Board promulgates the following standards and requirements for Board certification in estate planning and administration in accordance with the Louisiana State Bar Association Plan of Legal Specialization (the "Plan") and the Rules and Regulations of the Louisiana Board of Legal Specialization (the "Rules").

Section I. DEFINITIONS

- A. The practice of law means full-time legal work performed for the purpose of rendering legal advice or legal representation to the general public, private employers or governmental agencies.
- B. Full-time shall be defined as working a minimum of 35 hours per week.
- C. Estate planning and administration is the practice of law dealing with the creation, protection and disposition of a client's assets, during life, upon, and after death, in accordance with the law and the client's desires after considering the tax and family relationship consequences of the client's acts and wishes. It includes providing advice about donations, wills, trusts, life insurance, business arrangements and agreements, income and transfer taxes, the estate planning aspects of qualified and nonqualified plans and deferred compensation agreements, and other estate planning matters. It includes the preparation of simple and complex wills (which may include provisions for testamentary trusts, marital deductions and elections), donations, revocable and irrevocable inter vivos trusts (including trusts for minors and charitable trusts), and business planning agreements (including buy-sell and other shareholder agreements), powers of attorney, advance directives, and other estate planning instruments. Estate planning and administration also includes advising clients and handling matters related to the administration of estates, trusts, interdictions and tutorships, the probate of wills, determination of heirship, will contest and interpretation suits, and other proceedings related to the disposition of assets of a decedent, interdict or minor. It also includes the preparation and review of United States estate tax and generation skipping transfer tax returns, Louisiana estate transfer tax returns, federal gift tax returns, and legal representation before the Internal Revenue Service, the Louisiana Department of Revenue and Taxation, and the Court in connection with tax returns and related controversies. It also includes issues affecting the elderly and disabled such as Social Security, Medicare, Medicaid, Veterans benefits, Special Needs Trusts, housing and other government benefits.
- D. Certification as a specialist shall be effective the date the Board authorizes recognition and shall remain effective for five (5) years from January 1 of the year of recognition.

Section II. BASIC REQUIREMENTS

- A. Application
 - 1. Each applicant, shall be an active member in good standing of the Louisiana State Bar Association.

2. Each applicant shall have a minimum of five (5) years of actual practice of law on a full time basis preceding the year of application.
3. Each applicant shall certify under oath that during at least 48 of the 60 months immediately preceding the year of application has been as an attorney practicing in the state of Louisiana and that he or she devoted a minimum of 35% of a full time work schedule in the practice of law annually in the field of estate planning and administration law, as defined in Section I, C.
4. The Advisory Commission must receive on behalf of an applicant, on a form furnished by the Louisiana Board of Legal Specialization, a minimum of five (5) reference statements from practicing attorneys who can attest to the applicant's competence in the specialty field of estate planning and administration. Of the five (5) references, at least one (1) must be from a Board Certified Estate Planning and Administration Specialist. These submissions shall be subject to the limitations as outlined in Section 8.4 of the Rules.
5. Each applicant shall consent to a confidential inquiry by the Board and/or the Advisory Commission, directed to all persons who serve as references for the applicant, and to other persons regarding about the applicant's competence and qualifications to be recognized as an Estate Planning and Administration Specialist. This inquiry and review shall consider information furnished by references and other information that the Advisory Commission deems relevant to whether the applicant has sufficient competence and proficiency handling the usual matters of the specialty field. This information may include the applicant's work product, problem analysis, statement of issues and analysis, ethics, reputation, professionalism or such other criteria which the Advisory Commission deems appropriate to take into account prior to making its recommendations.
6. Each applicant must comply with the rules and regulations established by the Board as they relate to release of disciplinary action information.
7. Each applicant is required to obtain by December 31 of the year of application a minimum of 18 hours of continuing legal education (CLE) in the field of estate planning and administration. All CLE credits of an applicant must be approved by the Louisiana Supreme Court Committee on Mandatory Continuing Legal Education ("MCLE") and the Advisory Commission. CLE earned in prior years may not be used to satisfy the 18 hour requirement within the year of application. An applicant will not qualify for the specialization CLE exemption in the year of application.
8. Each applicant must maintain professional liability insurance in the minimum amount of \$1,000,000 and the policy must be offered by a company reasonably acceptable to the Board. Evidence of insurance shall be provided to the Advisory Commission by December 1 of the year of application.
9. Each applicant must take and pass a written examination.

B. Maintenance

Each Board Certified Estate Planning and Administration Specialist must satisfy the following criteria to maintain their estate planning and administration specialization certification:

1. Be an active member in good standing of the Louisiana State Bar Association.
2. Certify under oath, on a form provided by the Board that he or she engages in the actual practice of law on a full time basis.

3. Certify under oath, on a form provided by the Board, that he or she is an attorney practicing in the state of Louisiana and that he or she has devoted a minimum of 35% of a full time work schedule in the practice of law annually in the field of estate planning and administration law, as defined in Section I, C herein.
4. During each year of certification, must attend a minimum of 18 hours of approved estate planning and administration continuing legal education programs which comply with Section III below and the Supreme Court of Louisiana Rules for Continuing Legal Education. Up to eight (8) hours of approved estate planning and administration specialization CLE earned in excess of the 18 hour minimum required per year will be permitted to carry forward to the subsequent year, but may not be carried forward from the application year.
5. Maintain professional liability insurance in the minimum amount of \$1,000,000, unless waived for good cause by the Board. The policy must be offered by a company reasonably acceptable to the Board. Proof of insurance shall be provided annually with payment of the annual dues and upon request.
6. Pay all fees required by the Rules.

C. Recertification

1. Recertification as a Board Certified Estate Planning and Administration Specialist shall be required every five (5) years from the date of certification or recertification, as the case may be.
2. Each Board Certified Estate Planning and Administration Specialist shall present an application every five (5) years, on a form furnished by the Board, certifying that he or she has met the requirements of Section II B above.

Section III. STANDARDS FOR CONTINUING LEGAL EDUCATION PROGRAMS

B. Program Development and Presentation

1. The program should contribute to the professional competence of a Board Certified Estate Planning and Administration Specialist in the area of estate planning and administration law and should be open for attendance by all such attorneys.
2. Programs should be developed by individual(s) qualified in the subject matter.
3. Program content should be current. Estate planning and administration specialization CLE credit will be granted for an entire program if 50% or more of the program is devoted to estate planning and administration subjects. If the program in its entirety does not meet the 50% requirement, individual sessions within the program will qualify for estate planning and administration specialization CLE credit if 50% or more of the content of the session is devoted to estate planning and administration.
4. Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation (if required), and teaching methods.
5. Instructors or discussion leaders should be qualified with respect to program content and teaching method used.

6. Program sponsors should encourage participation only by individuals with appropriate education and/or experience.
7. The program sponsor must maintain registration and/or attendance records and such other records as may be necessary to substantiate compliance of the program with the above criteria.

C. Programs Which Qualify

1. General Rule

Continuing legal education (“CLE”) programs must be approved by the Louisiana Supreme Court Committee on Mandatory Continuing Legal Education (MCLE) before approval can be granted by the Advisory Commission. The overriding consideration in determining if a specific program qualifies as acceptable continuing legal education is that it be a formal program of learning which contributes directly to the professional competence of an attorney who specializes in the field of estate planning and administration law.

2. Program Approval

Programs shall be approved on a case-by-case basis by the Advisory Commission provided the program meets the general standards set forth in Section III, A and B 1.

No credit shall be awarded for firm meetings or "in house" CLE programs.

Section IV. OTHER METHODS OF EARNING SPECIALIZATION CLE CREDIT

A. General Rules

1. Any other method of earning specialization CLE credit must be approved by MCLE before approval can be granted by the Advisory Commission, who shall then approve each request on a case-by-case basis.
2. All credit earned shall be calculated by MCLE in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education.
3. All requests for CLE credit shall be submitted to MCLE and the Advisory Commission within a reasonable period of time but no later than January 31 of the calendar year following the activity for which CLE credit is being sought.

B. Teaching

1. CLE credit may be awarded for teaching an approved CLE program pertinent to the specialization subject matter. If an individual teaches at a program and attends the balance of the program, then he or she shall receive credit for that portion of the program he or she did not teach in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education. No credit will be given for repetitious presentations of a program.
2. Teaching of academic courses in estate planning and administration law in a law school or other graduate level program presented by a recognized professional educational association may earn CLE credit.

3. CLE credit may be awarded for teaching an estate planning and administration course at any seminar, provided the presentation meets all criteria contained in Section III, A and B, other than Section III, A.3.

C. Writing

CLE credit may be awarded for writing of articles and other publications directed primarily to attorneys specializing in the estate planning and administration field of law and published in professional periodicals and publications. Credit will not be awarded for authorship of articles and other publications until the writing has been published.

D. Louisiana State Law Institute Committee Meetings

CLE credit may be awarded for attendance at Louisiana State Law Institute Committee meetings pertinent to the field of estate planning and administration.

E. Pro Bono

CLE credit may be awarded for providing uncompensated pro bono legal representation related to an estate planning and administration matter, as defined in Section IC herein, to an indigent or near-indigent client or clients. CLE credit shall not be granted until the representation has been assigned, completed and verified by the assigning organization as defined by and in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education.

Section V. CREDIT HOURS GRANTED

- A. Only credit hours or the equivalent (and not hours dedicated to preparation) will be counted.
- B. One (1) hour of continuing legal education credit will be awarded for each 60 minutes of instruction. Where the program is several periods of instruction with intervening breaks, the number of minutes of instruction are summed for the entire program for which the credit is claimed and then the total number of minutes is divided by 60.
- C. A participant who is not present for an entire program may claim credit only for the portion he or she attended.
- D. The credit hours assigned to a program by MCLE will be accepted by the Advisory Commission unless the hours are clearly inaccurate under the standards for computing credit in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education.

Section VI. COMPLIANCE

A. General Rule

Specialization CLE credit hours will be computed on a calendar year basis and all attendance information for CLE credits earned shall be delivered to MCLE by January 31 of the following year.

B. Notification

The Board will notify each non-compliant Board Certified Estate Planning and Administration Specialist of the credit hours he or she has earned during the preceding calendar year. The specialist shall have 30 days from the date of notification to appeal the award of credit hours.

A specialization transcript may be obtained from the Louisiana Board of Legal Specialization website located at: <https://www.lascmcle.org/specialization/index.aspx>.

Section VII. ADMINISTRATION

The Advisory Commission may delegate its responsibility to rule on all matters pertaining to estate planning and administration CLE requirements to a committee consisting of at least three (3) Advisory Commission members. Any such committee shall report to the Advisory Commission, and the Advisory Commission shall, at all times, retain the right to review, modify, or supersede the decisions of any such committee.