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Statement of the Case and Facts

The Florida Certification Plan was adopted by this Court on January 28, 1982, and became effective July 1, 1982, The Florida Bar Re: Amendment to Integration Rule (Certification Plan), 414 So.2d 490 (Fla. 1982).

The Florida Certification Plan (Plan) and the Civil Trial Law and Tax Certification Standards have been officially in operation for over two years. During that time, the two "classes" of civil trial law and tax applicants have been certified and the third "class" of applicants are now being processed.

As a result of the experience with the Plan and the Tax and Civil Trial Certification Standards, The Florida Bar petitioned this Court for adoption of a series of amendments to clarify certain provisions and improve the requirements for participation. The Florida Bar also asked this Court to approve Marital and Family Law as the third area established under the Plan. That petition was granted by this Court in The Florida Bar Re: Amendment to Bylaws of Integration Rule (Certification Plan), 453 So.2d 25 (Fla. 1984).

The Florida Bar again petitions this Court for an amendment to the Plan and submits proposed Estate Planning and Probate Certification Standards as the fourth area under the Plan. These standards have received careful consideration and scrutiny by the Real Property, Probate and Trust Law Section and the Board of Certification, Designation and Advertising (BCDA), and are ready for review by this Court.

The proposed amendment to the Plan was approved by The Florida Bar Board of Governors at its July 1984 meeting. The amendment to the Integration Rule Bylaws is appended to this brief as Appendix A. The proposed Estate Planning and Probate Certification Standards were approved by The Florida Bar Board of Governors at its May, 1984 meeting and are appended to this brief as Appendix B.

Point I

CERTIFICATION COMMITTEE MEMBERSHIP SHOULD BE EXPANDED

Section 2, article XIX of the Integration Rule Bylaws governing the Florida Certification Plan (Plan) sets forth the makeup and requirements for membership of the certification committee in each area. The membership requirements presently are:

a) An initial appointee must be an eminent attorney in the area of certification and be a member of The Florida Bar for at least ten years.

b) A subsequent appointee must be certified in the area and be a member of The Florida Bar for at least ten years.

Appendix A to this brief sets forth amendments to Section 2 of the Plan which eliminates the ten-year requirement for subsequent certification committee appointees. It retains the "ten-year" and "eminent attorney" requirements for initial committee appointees, as well as the "certified" requirement for subsequent appointees.

There has been no real debate raised about the need to require that initial appointees to a certification committee be both eminent attorneys in the area and members of The Florida Bar for at least ten years. It is conceded that the first two or three years of experience with a certification area are crucial to its development and that time requires the involvement of the best-known and respected practitioners in the area. These persons will be responsible for the initial implementation of the program and testing of the first "classes" of applicants. Subsequent appointees will have passed the test and other requirements for certification, so they should be acceptable by their peers without the other requirement of ten years' practice.

The Bar always strives to involve "the best and the brightest" in its programs. Deletion of the ten-year requirement for subsequent appointees will give the Bar additional flexibility

in the composition of these committees. According to the data appendix to the May 1984 Report of the Long Range Planning Committee of The Florida Bar, 70% of the Bar's membership has been admitted ten years or less. The preliminary results of The Florida Bar's Membership Attitude Survey (Summer 1984) establish that 30.9% of the Bar's membership has been admitted between five and ten years. Removing the ten-year requirement will therefore give the president of The Florida Bar the ability to appoint committee members which are both representative of the Bar's membership and which could come from this 31%.

The proposed amendment means subsequent certification committee members will no longer have to be Florida Bar members for at least ten years prior to appointment. Appointees would still have to be certified in the area when appointed and would still have to meet any other requirements established by the BCDA. It does not mandate or require a "young lawyer" be appointed, nor does it alter the current makeup of the committees. It just means the president could appoint and the Board of Governors could affirm (after the initial committee has been appointed), a certification committee member with less than ten years' admission to The Florida Bar.

Point II

THE PROPOSED ESTATE PLANNING AND PROBATE CERTIFICATION STANDARDS SHOULD BE APPROVED UNDER THE FLORIDA CERTIFICATION PLAN.

Article XXI, Section 2 of the Integration Rule provides that the purpose of the Florida Certification Plan is to establish a formal program "...which allows members of The Florida Bar to inform the public concerning areas of law practice in which such members have become certified as having special knowledge, skills and proficiency..."

The Florida Bar Board of Governors believes it is now appropriate to add Estate Planning and Probate as the fourth area under the Florida Certification Plan.

Involvement by members of The Florida Bar in this area of practice is evidenced by the fact there are approximately 5,800 members of the Real Property, Probate and Trust Law Section (Section). There are also presently 690 members designated in the area of Estate Planning and Probate under the Florida Designation Plan.

The proposed Estate Planning and Probate Certification Standards have been under study and review by the Section since 1979. At the time The Florida Bar Board of Governors presented the proposed Florida Certification Plan to this Court in 1978, the Section had begun work on standards which were deferred until the Civil Trial and Tax Certification Standards had been approved and experience gained in the operation of the Certification Plan. The Section again began work on its standards in 1982 following approval of the Certification Plan. The proposed standards were submitted by the executive council of the Section to the Section membership on November 29, 1982. Comments from section members were reviewed and considered by the Section's executive council prior to submission to the BCDA. The BCDA reviewed and approved the proposed standards on

April 20, 1984. The proposed standards were approved by the Board of Governors at its May 17-19, 1984, meeting.

As this Court is no doubt aware, this area of the law has undergone rapid changes in the past five years and is becoming increasingly complex. A substantial percentage of "estates" do not require extensive planning or tax analysis, and those matters are handled by Florida lawyers on a regular basis. The creation and probating issues in those of such estates are handled by counsel and the courts in straightforward fashion. However, this Court is aware that estate drafting and related planning can require the utmost care, precision, knowledge and expertise of practitioners. It is in these complex, technical and litigated cases that the public wants to retain counsel which it believes has the necessary knowledge and skills to properly represent their interests. There is widespread advertising and confusion to the public by Commission merchants holding themselves out as estate planners and selling their wares by attacking estate administration. The proposed Estate Planning and Probate Standards are designed to provide the public with a meaningful distinction between the certified and noncertified estate planner, and establishes a category of practitioner who may be relied upon by the public.

Appendix B of this brief sets forth the proposed Estate Planning and Probate Certification Standards along with commentary on the intent of each section. To assist this Court in consideration of the proposed standards, the various sections will be briefly outlined herein.

Section 1 of the Standards establishes various definitions which are relevant to the standards, the definitions for the "practice of law" and what constitutes "estate planning and probate."

Section 2 contains the minimum standards for applicants seeking certification in Estate Planning and Probate. The section:

a) Establishes the minimum period of law practice as five years and requires an applicant to have been a member of a state bar for at least five years;

b) Defines "substantial involvement" as devoting more than fifty percent of an applicant's practice during the preceding five years to estate planning, probate or probate related work. This five years "immediately preceding" requirement may be waived (except for the two years immediately preceding) upon proof of special and compelling circumstances;

c) Requires the submission of the names of five attorneys who are familiar with the applicant's practice;

d) Requires at least 60 hours of approved continuing legal education during the three years preceding application; and

e) Requires the passage of an examination prior to certification.

Section 3 sets forth the requirements for applicants seeking recertification. This section:

a) Requires continuous and substantial involvement (more than fifty percent of the lawyer's practice) in estate planning and probate law during the five year certification period;

b) Accumulation of at least 125 hours of approved continuing legal education during the five year certification period;

c) Passage of a written, short, objective, mail-in examination covering important changes in the law; and

d) Submission of names of three Board Certified Estate Planning and Probate Lawyers who can attest to the applicant's practice in estate planning and probate law.

It should be noted this is the first area being presented to the Court for approval which requires applicants for recertification to pass some type of examination prior to being recertified. Failure to pass this "take-home" examination will require the applicant to reapply and seek certification as a new applicant. This requirement is being proposed for this area because of the anticipated changes in tax law and the complexities of the broad disciplines involved in the area.

Following approval of the Florida Certification Plan, The Florida Bar gained experience with the operation of the program and the Civil Trial and Tax Certification Standards before Marital and Family Law was proposed to this Court for adoption. The Florida Certification Plan has completed two full "cycles" of application processing and is well into its third "cycle." Because of the "lead time" necessary for establishment of any new area, the Estate Planning and Probate Certification Standards are being presented to this Court at this time for consideration and adoption. It is the belief of The Florida Bar Board of Governors that Estate Planning and Probate should be approved effective July 1, 1985, so that the certification department of The Florida Bar may begin accepting applications after that date for processing during the Bar's 1985-86 fiscal year.

Conclusion

For the reasons outlined in this brief, The Florida Bar Board of Governors respectfully requests this Court adopt the proposed change to the Florida Certification Plan and approve the proposed Estate Planning and Probate Certification Standards as set out in the attachment to the petition filed in this matter.

The Florida Bar Board of Governors respectfully requests this Court adopt the other proposed change and the Estate Planning and Probate Certification Standards not later than April 1, 1985. The Board of Governors requests approval by that date so that The Florida Bar can again publish the Estate Planning and Probate Standards to the membership. It will also permit the president of The Florida Bar to appoint (with the advice and consent of the Board of Governors) the Estate Planning and Probate Certification Committee during the May 1985 meeting of the Board of Governors. That will then provide the Certification Committee, the Board of Certification, Designation and Advertising and the certification department staff time to develop the appropriate applications and forms so that individuals may begin applying for certification in Estate Planning and Probate in July 1985.

Respectfully submitted,



John F. Harkness, Jr.
Executive Director

Gerald F. Richman, President
The Florida Bar
Two South Biscayne Boulevard
25th Floor
Miami, Florida 33131
(305) 377-0241

Patrick G. Emmanuel, President-elect
The Florida Bar
Post Office Drawer 1271
Pensacola, Florida 32596
(904) 433-6581

Joel H. Sharp, Jr., Chairman
Board of Certification,
Designation, and Advertising
Post Office Box 112
Orlando, Florida 32802
(305) 841-1111

John F. Harkness, Jr.
Executive Director
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

Rayford H. Taylor
General Counsel
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286