RESOLVED, That the American Bar Association adopts certain clarifying provisions to Standard 4.06(C) Written Examination of the Standing Committee on Specialization's Standards for the Accreditation of Specialty Certification Programs for Lawyers, dated August 2020.
Background and Synopsis of the Resolutions

At the 1993 Midyear Meeting, the House adopted Standards for Accreditation of Specialty Certification Programs For Lawyers and delegated to the Standing Committee on Specialization the task of evaluating programs sponsored by organizations that apply to the ABA for accreditation, and making recommendations to the House of Delegates about the periodic renewal of accreditation.

The adoption of the Standards in February 1993 (93MY105), followed an August 1992 (92AM128), House resolution requesting that the Association develop standards for accrediting private organizations that certify lawyers as specialists, and that the Association establish and maintain a mechanism to accredit organizations that meet those standards. The 1992 resolution affirmed that a national accreditation mechanism administered by the Association according to uniform standards would be an efficient and effective means of dealing with a multiplicity of organizations that are offering, or planning to offer, certification programs. At the 1999 Annual Meeting (99AM107A), the House extended the initial period of accreditation approved in the Standards from three to five years. In addition, the House lengthened the period of reaccreditation from every third year to every fifth year. The Standards were last revised and approved by the ABA in August 2014.

At its October 2019 committee meeting, the committee discussed the need for a revised exam standard in order to provide additional instructions for both the certifying organizations when creating certification exams that meet the standards, and the exam reviewers who review exams during the accreditation and reaccreditation application process. The revisions below were approved by the Committee in April 2020.

Current Standard 4.06(C) Written Examination

(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. On written request from an Applicant, the Standing Committee may allow the Applicant to certify up to twelve lawyers who create and grade the initial version of the examination required under this paragraph without requiring those lawyers to take and pass the examination. Such written request to the Standing Committee shall include the names and addresses of the lawyers, and shall expressly state that they have created and graded, or will grade, the initial version of the examination required under this paragraph, and that they otherwise meet the certification requirements described in ¶4.06(A), (B), (D), (E), and (F).
(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.

(i) The examination shall include professional responsibility and ethics as it relates to the particular specialty. In addition, the written examination:

1. Shall be prepared reasonably consistent with testing industry recognized standards of examination preparation, administration, and testing;

2. Shall be designed to identify lawyers who have special experience, knowledge, and skills, and substantive expertise in the practice area tested;

3. Shall be prepared in accordance with written examination specifications developed and approved by the Certifying Organization. The examination specifications shall assist the drafters of the examination in the preparation of the examination and communicate to potential examinees the substantive scope of the examination. The examination specifications should also identify the number and type of questions, the point values for the questions and subparts of the examination, the total number of points needed to pass the examination, the grading scale that will be used to grade the exam, the scoring guide for grading essay question answers, the effective date of applicable law the questions will be based on, and the time limit for completing the examination. The examination specifications should also contain some sample questions and model answers;

4. Shall be edited and proofread to avoid typographical, grammatical, and clerical errors, and to avoid questions and model answers containing gender, religious, sexual orientation, national origin, or racially based discriminatory language;

5. Shall be administered in compliance with applicable law to reasonably accommodate any examinee who has a disability;

6. Shall not be arbitrary, ambiguous, or capricious in its design, format, instructions, or grading, and shall be accurate in its substance;

7. Shall be clear in terms of what the examinee has been asked to answer or discuss, and shall focus on matters experts in the area of law usually encounter; and

8. Shall be reviewed in advance of the examination administration, when reasonably practical, by at least one attorney whose practice focus is in the area of law tested, to further ensure compliance with the written examination standards set forth in this Section.
(ii) On written request from an Applicant, the Standing Committee may allow the Applicant to certify up to twelve lawyers who create and grade the initial version of the examination required under this paragraph without requiring those lawyers to take and pass the examination. Such written request to the Standing Committee shall include the names and addresses of the lawyers, and shall expressly state that they have created and graded, or will grade, the initial version of the examination required under this paragraph, and that they otherwise meet the certification requirements described in ¶¶4.06(A), (B), (D), (E), and (F).

**Final Revised Standard 4.06(C) Written Examination**

(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.

(i) The examination shall include professional responsibility and ethics as it relates to the particular specialty. In addition, the written examination:

1. Shall be prepared reasonably consistent with testing industry recognized standards of examination preparation, administration, and testing;

2. Shall be designed to identify lawyers who have special experience, knowledge, and skills, and substantive expertise in the practice area tested;

3. Shall be prepared in accordance with written examination specifications developed and approved by the Certifying Organization. The examination specifications shall assist the drafters of the examination in the preparation of the examination and communicate to potential examinees the substantive scope of the examination. The examination specifications should also identify the number and type of questions, the point values for the questions and subparts of the examination, the total number of points needed to pass the examination, the grading scale that will be used to grade the exam, the scoring guide for grading essay question answers, the effective date of applicable law the questions will be based on, and the time limit for completing the examination. The examination specifications should also contain some sample questions and model answers;

4. Shall be edited and proofread to avoid typographical, grammatical, and clerical errors, and to avoid questions and model answers containing gender, religious, sexual orientation, national origin, or racially based discriminatory language;

5. Shall be administered in compliance with applicable law to reasonably accommodate any examinee who has a disability;

6. Shall not be arbitrary, ambiguous, or capricious in its design, format, instructions, or grading, and shall be accurate in its substance;
7. Shall be clear in terms of what the examinee has been asked to answer or discuss, and shall focus on matters experts in the area of law usually encounter; and

8. Shall be reviewed in advance of the examination administration, when reasonably practical, by at least one attorney whose practice focus is in the area of law tested, to further ensure compliance with the written examination standards set forth in this Section.

(ii) On written request from an Applicant, the Standing Committee may allow the Applicant to certify up to twelve lawyers who create and grade the initial version of the examination required under this paragraph without requiring those lawyers to take and pass the examination. Such written request to the Standing Committee shall include the names and addresses of the lawyers, and shall expressly state that they have created and graded, or will grade, the initial version of the examination required under this paragraph, and that they otherwise meet the certification requirements described in §§4.06(A), (B), (D), (E), and (F).

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution, if approved, revises the exam standard to be applied during the review of an organization’s certifying exam during the accreditation and reaccreditation process.

Respectfully submitted,

Barbara J. Howard
Chair, Standing Committee on Specialization
August 2020
APPENDIX

(Excerpted provisions of the Standards for Accreditation of Specialty Certification Programs For Lawyers)
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 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.

(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.

4.06 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.

4.09 **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.

# # # # # # #
1. Summary of the Resolution.

The resolution will approve clarifying revisions to Standard 4.06(C), which addresses written examinations of certifying organizations.

2. Approval by Submitting Entity.

The Standing Committee on Specialization approved the Resolution in April 2020.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes, the Standards were last revised and approved in August 2014.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Standard 4.06(C) – Written Examination - the American Bar Association Standards for Accreditation of Specialty Certification Programs for Lawyers will be affected by the adoption of this Resolution as it provides a revision; they are the policy under which any action to accredit or withhold accreditation are taken by the Association.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

Prompt action is necessary in order to allow the Standing Committee to begin applying this revised standard in future accreditation and reaccreditation application reviews.


N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

N/A
Implementation will be self-executing if the program is reaccredited by the House of Delegates.

8. **Cost to the Association**

There are no unreimbursed costs associated with the reaccreditation of specialty certification programs as proposed in the recommendation.

9. **Disclosure of Interest**

None.

10. **Referrals**

None.

11. **Contact Person (Prior to the Meeting)**

Barbara J. Howard  
Chair, Standing Committee on Specialization  
960 Mercantile Center  
120 E. Fourth St.  
Cincinnati, OH 45202  
Email: bhoward@barbarajhoward.com

Erin Ruehrwein  
Section Director, Section of Legal Education and Admissions to the Bar  
321 North Clark Street  
Chicago, IL 60654  
Phone: 312-988-5512  
Email: Erin.Ruehrwein@americanbar.org

12. **Contact Person (Who will present the Report to the House)**

Barbara J. Howard  
Chair, Standing Committee on Specialization  
960 Mercantile Center  
120 E. Fourth St.  
Cincinnati, OH 45202  
Email: bhoward@barbarajhoward.com
EXECUTIVE SUMMARY

1. Summary of the Resolution.
   
The resolution will approve revisions to Standard 4.06(C), which addresses written examinations of certifying organizations.

2. Summary of the issue that the resolution addresses.
   
   To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution, if approved, revises the exam standard to be applied during the review of an organization’s certifying exam during the accreditation and reaccreditation process.

3. Please explain how the proposed policy position will address the issue.
   
   The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate specialty certification organizations that apply for accreditation and reaccreditation.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.
   
   None