RESOLVED, That the American Bar Association reaccredits for an additional five-year term the DUI Defense program of the National College for DUI Defense; and

FURTHER RESOLVED, That the American Bar Association extends the accreditation period of the Family Trial Law and Criminal Trial Law programs of the National Board of Trial Advocacy until the adjournment of the next meeting of the American Bar Association’s House of Delegates in August, 2019.
REPORT

Background and Synopsis of the Recommendations

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. 1993 MY 105. (The relevant portions of those accreditation requirements are set out in an endnote to this Report.¹)

The adoption of the Standards in February, 1993, followed an August, 1992, 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. 1992 AM 128. 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.

Sections 5.01 and 5.02 of the Standards require that “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,” and that re-accreditation “shall be granted” if the certifying organization shows that the program continues to comply with the Standards’ detailed accreditation requirements.

The Standing Committee on Specialization currently has pending applications for reaccreditation from three programs, the DUI Defense program of the National College for DUI Defense (“NCDD”), and the Criminal Trial Law and Family Trial Law programs of the National Board of Trial Advocacy (“NBTA”).

The Standing Committee has reviewed the applications for these three programs and recommends the reaccreditation of the DUI Defense program of the NCDD.

The Standing Committee cannot recommend reaccreditation of the NBTA programs at this time because it has not received adequate evidence of those programs’ compliance with the Standards’ requirements for certification application reviewers’ expertise. But the Standing Committee continues to communicate with the NBTA regarding administration of those programs and anticipates being able to make a recommendation regarding reaccreditation within the next few months. The Standing Committee thus recommends extending the existing period of accreditation for those NBTA programs until the 2019 Annual Meeting at which time the Standing Committee will make a final recommendation.

Description of Applicants
The National College for DUI Defense is a professional, non-profit corporation dedicated to the improvement of the criminal defense bar—and particularly those who defend clients charged with DUI—and to the dissemination of information to the public about DUI Defense Law as a specialty area of law practice. NCDD members represent the most experienced DUI defense attorneys in the country. Since its founding, the NCDD has continued to recognize, as Sustaining Members, defense lawyers who have demonstrated the skill and experience of the original Founding Members, as well as the generosity to financially sustain the growth of the NCDD. General Members are the backbone of the NCDD—capable, experienced attorneys who dedicate a portion of their practice to the defense of DUI cases throughout the country.

The National Board of Trial Advocacy is the oldest and largest private organization certifying American lawyers as specialists. It is dedicated to achieving and maintaining a high standard of practice and to leveling the playing field for clients is shared by those who obtain NBTA certification. Certificate holders undergo a thorough screening of their credentials, including documentation of experience, judicial and peer references, and written examination. They must report all disciplinary matters brought before any official body, whether public or private, for scrutiny by the NBTA Standards Committee.

Reaccreditation and Evaluation Procedures

In evaluating the applications, the Standing Committee followed the Governing Rules it adopted on March 2, 1993, as amended from time to time since. All of the applications currently pending were filed in the summer of 2018. The applications were accompanied by payment of a reaccreditation fee for the specialty certification programs for which the applicants sought reaccreditation.

In order to ensure that each of the programs continues to comply with ABA Standards, the Standing Committee requires that the following accompany all applications:

i. Current versions of 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 programs;

ii. Biographical summaries of members of the governing board, senior staff and members of advisory panels, certification committees, examination boards and like entities involved with the certification process, including specific information concerning the degree of involvement in the specialty area of persons who review and pass upon applications for certification;

iii. All materials furnished to lawyers seeking certification, including application forms, booklets or pamphlets describing the certification program, peer reference forms, rules and procedures, evaluation guides and any other
information furnished to the public or the media regarding the certification process;

iv. A copy of the recent examinations given to applicants for specialty certification, along with a description of how the exam was developed, conducted and reviewed; a description of the grading standards; and the names of persons responsible for determining pass/fail standards.

Furthermore, as to the applications of the NBTA programs, in addition to passage of the examinations it administers itself, the NBTA accepts applicants’ passage of examinations administered by the New Jersey Supreme Court’s Board on Attorney Certification, the Texas Board of Legal Specialty Certification, and the Florida State Bar’s Board of Legal Specialization and Education. Recent examinations from all of these programs were made available, on a confidential basis, for review by examination reviewers appointed by the Standing Committee to review the NBTA programs. The volume of exams to be reviewed for these programs has required extra time for the Standing Committee’s application review for this program, and the Committee also continues to communicate with NBTA officers regarding the procedures for its application review, specifically regarding the expertise of its appointed reviewers of certification applications.

**National College for DUI Defense application:**

The professionals who reviewed the application materials for the DUI Defense program that the Specialization Committee recommends to be reaccredited are:

**Steven Lesser** (Fort Lauderdale, Florida), Chair of National College for DUI Defense Review Panel. Mr. Lesser is a partner in the Fort Lauderdale office of the firm Becker Poliakoff, and is a member of the Standing Committee on Specialization. He is certified by the Florida State Bar as a specialist in Construction Law.

**Samuel Edmunds** (Mendota Heights, Minnesota), National College for DUI Defense Review Panel. Mr. Edmunds is a founding partner of Sieben Edmunds, and is a member of the Standing Committee on Specialization. He is a certified Criminal Law Specialist by the Minnesota Bar Association.

**Daniel Trujillo** (Denver, Colorado), National College for DUI Defense Review Panel. Mr. Trujillo is the Certification Director for the National Association of Counsel for Children, an organization that administers an ABA-accredited specialist certification program in Juvenile Law.

The examination reviewer for the NCDD examinations was **Kathie Perry**, a partner in the firm of Baldwin Kyle Perry & Kamish, P.C., in Franklin, Indiana, where she practices criminal law defense, including DUI defense.
Pending Application of the National Board of Trial Advocacy programs in Family Trial Law and Criminal Trial Law and Need for Extension.

The NBTA timely submitted its application for re-accreditation of its Family Trial Law and Criminal Trial Law programs under Section 5 of the Standards in the summer of 2018. The Standing Committee has not yet completed its review and assessment of the NBTA’s full complement of examinations, however, and continues to communicate with the NBTA regarding its certification application review procedures.

The five-year anniversary of the last re-accreditation of these NBTA programs occurs in February, 2019, however. So, in order to avoid a formal lapse in that accreditation under the Standing Committee’s Governing Rules, the Standing Committee recommends to the House of Delegates that the period of accreditation be extended until the end of the Association’s next general meeting, the Annual Meeting in August, 2019, before which meeting the Standing Committee will have arrived at a formal recommendation whether or not to reaccredit these two programs.

Respectfully submitted,

Barbara J. Howard
Chair, Standing Committee on Specialization
January 2019

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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.

4.06 Certification Requirements -- An Applicant shall require for certification of lawyers as specialists, at 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. (F) Affirmation of Compliance -- A lawyer seeking certification shall affirm in a manner satisfactory to Applicant that the lawyer's practice in the specialty area is consistent with the lawyer's status as a certified specialist.
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 evidence of good standing, and affirmation of compliance.

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.
GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Standing Committee on Specialization
Submitted By: Barbara J. Howard, Chair

1. Summary of Recommendations

The recommendation requests that the American Bar Association grant reaccreditation to the DUI Defense law program of the National College for DUI Defense, and extend the existing accreditation periods of the Family Trial Law and Criminal Trial Law programs of the National Board of Trial Advocacy until August 2019. These programs have been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for such programs adopted and authorized by the House of Delegates in February 1993.

2. Approval by Submitting Entity

At a telephonic meeting on September 25, 2018, the Standing Committee on Specialization voted unanimously that it submit this recommendation to the House of Delegates for consideration at the 2019 Midyear Meeting.

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

Yes. The DUI Defense specialist certification program was last reaccredited at the 2014 Mid-Year Meeting. The Family Trial Law and Criminal Trial Law programs were also last reaccredited in 2014.

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

At its August 1992 meeting, acting upon a recommendation proposed by 16 state and local bar associations, the House of Delegates passed a resolution calling for the Association to establish standards for accrediting private organizations that certify lawyers as specialists and to establish and maintain a mechanism to accredit such organizations that meet those standards. 1992 AM 128. In February 1993, the House of Delegates adopted the Standards for Accreditation of Specialty Certification Programs for Lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the Association for accreditation. 1993 MY 105.

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

Not applicable.
6. **Status of Legislation**

Not applicable

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

Implementation will be self-executing if the programs are reaccredited or extended 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. The costs associated with the reaccreditation process are defrayed by fees charged to the organizations seeking reaccreditation.

9. **Disclosure of Interest**

None

10. **Referrals**

None.

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

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

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution asks for reaccreditation of the DUI Defense specialist certification program of the National College for DUI Defense, and extension of the accreditation period of the Family Trial Law and Criminal Trial Law programs of the National Board of Trial Advocacy until August 2019.

2. Summary of the Issue that the Resolution Addresses

Accreditation by the Association is a formal requirement for certified lawyers to claim certification in approximately two dozen states, and the ABA Standards for Accreditation of Specialist Certification Programs for Lawyers requires periodic reaccreditation of all such programs.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Passage of the Resolution will allow continuation of the accreditation of these programs by the Association. Accreditation by the Association is a formal requirement for certified lawyers to claim certification in approximately two dozen states.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.