

IN THE SUPREME COURT OF TEXAS

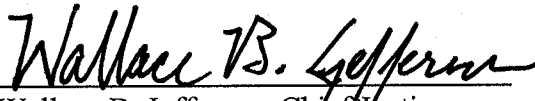
Misc. Docket No. 06-9152


**APPROVAL OF AMENDMENTS TO THE
ATTORNEY STANDARDS FOR CERTIFICATION
OF THE TEXAS BOARD OF LEGAL SPECIALIZATION
(PART I - GENERAL REQUIREMENTS)**

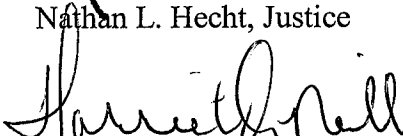
ORDERED that:

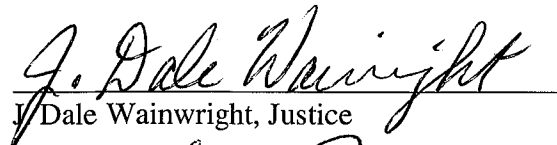
The following amendments to the Attorney Standards for Certification of the Texas Board of Legal Specialization concerning Part I-General Requirements are approved.

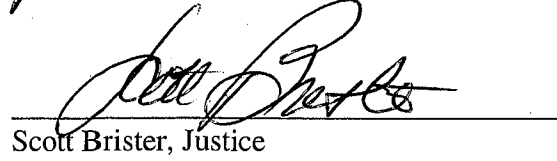
In Chambers, this 8th day of December, 2006.

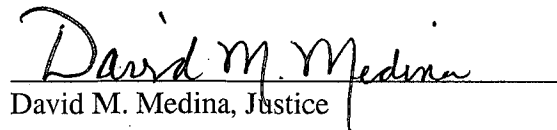

Wallace B. Jefferson, Chief Justice

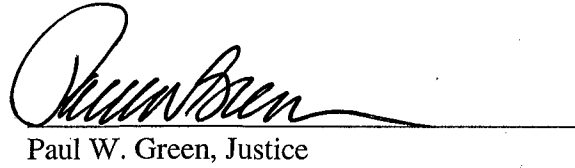

Nathan L. Hecht, Justice

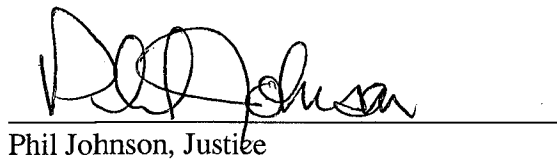

Harriet O'Neill, Justice

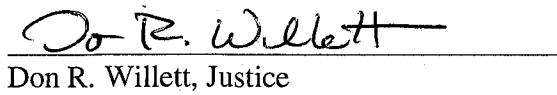

Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

TEXAS BOARD OF LEGAL SPECIALIZATION

STANDARDS FOR ATTORNEY CERTIFICATION
OF THE
~~TEXAS BOARD OF LEGAL SPECIALIZATION~~

These ~~Attorney~~ Standards for Attorney Certification are established by the Texas Board of Legal Specialization after approval of the Supreme Court of Texas.

The Standards for Attorney Certification are divided into two parts.

PART I,

GENERAL REQUIREMENTS: —These requirements apply to all specialty areas.

PART II,

SPECIFIC AREA REQUIREMENTS: —These are specific requirements that apply to the individual specialty areas. Included are the ~~definition~~ definitions, and ~~the~~ substantial involvement, and ~~reference~~ other requirements for certification and recertification. For example, "Specific Area Requirements for Criminal Law" refers to the specific requirements for certification and recertification in criminal law.

DEFINITIONS

Definitions as used in these Standards:

"TBLS" refers to the Texas Board of Legal Specialization.

"SBOT" refers to the State Bar of Texas.

"CLE" refers to continuing legal education.

"Plan" refers to the Texas Plan for Recognition and Regulation of Specialization in the Law.

"Rules" refers to the Attorney Rules and Regulations of ~~the~~ TBLS.

"~~Applicant(s)~~ Applicant" refers to ~~both the~~ either a certification or recertification applicant(s) unless otherwise specifically stated.

"Standards" refers to the Standards for Attorney Certification. The Standards are composed of ~~BOTH~~ both the General Requirements and the Specific Area Requirements.

~~"General Requirements" refers to the first part of the Standards, which lists the requirements that apply to all specialty areas.~~

~~"Specific Area Requirements" refers to the second part of the Standards, which includes the definition, the substantial involvement and reference requirements for each specialty area. For example, "Specific Area Requirements for Criminal Law" refers to the specific requirements for certification and recertification in Criminal Law.~~

PART I
GENERAL REQUIREMENTS
(This applies to all specialty areas)

SECTION I
PREFACE

The Supreme Court of Texas has prescribed the following requirements for board certification pursuant to the recommendation of TBLS.

- A. ~~Pursuant to the authority vested in the TBLS by the Supreme Court of Texas, the TBLS prescribes the following requirements for board certification in accordance with the Plan.~~ The purpose of these Standards is to recognize those attorneys having special competence in one or more of the specialty areas included in these Standards. In making the determination of special competence, TBLS will consider the following:
1. The substance and complexity of the tasks submitted to show the required substantial involvement in the specialty area;
 2. The professional accomplishments of the attorney in the specialty area;
 3. The skill and ability of an attorney in the specialty area;
 4. The knowledge of the attorney as shown on the specialty area examination; and
 5. The character and fitness of the attorney.
- B. No standard shall in any way limit the right of a board certified attorney to practice in all areas of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though board certified in a specific area of law.

- C. No attorney shall be required to obtain board certification before practicing in any area of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in any area of law, even though not board certified in that area.
- D. Board certification is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm of which ~~the~~ a board certified attorney is a member.

SECTION II
GENERAL REQUIREMENTS

- A. ~~State of Texas~~ Membership and Practice.
 - 1. SBOT Membership. ~~All applicants~~ An applicant and board certified ~~attorneys-attorney~~ must be an active members-member in good standing of the SBOT.
 - 2. Texas Office and Practice.
 - a. Certification Applicants Applicant. For the three years immediately preceding application, a certification applicant must have maintained a Texas office from which ~~the applicant~~ the or she personally conducts business an average of at least 3 days per week, until certification is achieved. Failure to meet this requirement will result in denial of application. TBLS may waive this requirement upon a showing of good cause.
 - b. Board Certified Attorneys-Attorney and Recertification Applicants Applicant. ~~All A~~ board certified ~~attorneys-attorney~~ and recertification ~~applicants-applicant~~ must continue to meet the substantial involvement requirements pertinent to ~~each applicable~~ the specialty area whether or not an office is maintained in Texas. ~~These are found in~~ For other recertification qualifications, refer to the applicable Specific Area Requirements.
- B. Forms. Documents, applications, questionnaires, and examinations involved in the certification and recertification process shall be prescribed and approved by ~~the~~ TBLS.
- C. Fees. ~~Applicants~~ An applicant and board certified ~~attorneys-attorney~~ shall timely pay the required fees as established by ~~the~~ TBLS.
- D. Expiration of Certification. Certification shall be for a period of 5 years at the end of which time recertification shall be permitted upon the terms and conditions established by ~~the~~ TBLS.

- E. Revocation of Certification. A certificate of special competence issued by the TBLS may be revoked for good cause as determined by the TBLS.
- F. Failure to Furnish Information and Misrepresentation. Certification or recertification may be denied, revoked, or other appropriate action taken because of an applicant's or board certified attorney's failure to furnish the requested information requested by TBLS or because of his or her misrepresentation of any material fact requested by the TBLS.
- G. Required Period of Law Practice. ~~Applicants~~ An applicant for certification shall have been engaged in the practice of law for a period of at least 5 years on a full-time basis. ~~Practice of law is as defined in the individual specialty area's Specific Area Requirements attached to these General Requirements. "Practice of law"~~ means full-time legal work done primarily for the purpose of legal advice or representation. ~~Service, after admission to the bar of any state or the District of Columbia, or as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy the requirement if the balance of certification applicant's activity is work such as law teaching or legal editorial duty which is legal in nature although not the practice of law. Years of practice need not be consecutive.~~
- H. ~~Examination.~~ Certification applicants must pass a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public. After a certification applicant has taken and failed an examination 3 times in a specialty area, the applicant is ineligible to apply for the next 3 years' examination in that specialty area.
- H. Definition of the Practice of Law. "Practice of law" means full-time legal work done primarily for the purpose of providing legal advice or representation. After admission to the bar of any state of the District of Columbia, service as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of providing legal advice to, or representation of, the corporation or government agency or individuals connected therewith. TBLS may allow other legal work, such as teaching law or writing legal publications, to be combined with the part-time practice of law to satisfy this requirement.

SECTION III
CHARACTER AND REPUTATION/DISCLOSURE OF CONDUCT

A. Disciplinary Review/Sanctions.

1. ~~Applicants and board certified attorneys shall furnish satisfactory evidence of their good character and reputation. They shall also furnish a statement as to whether or not they are now subject to an investigation, complaint, inquiry or other disciplinary proceedings by any organized bar, including any local, state or district grievance committee of an organized bar.~~ Applicants and board certified attorneys shall submit the details of such investigation, complaint, inquiry or proceedings including whether or not they have ever been reprimanded, suspended, disbarred or otherwise disciplined by any court or grievance committee. At the time of filing an application, a certification applicant shall disclose whether he or she has ever been sanctioned for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct by any authorized disciplinary authority, including a court, and shall also disclose whether he or she has a pending investigation for professional misconduct. During the application process, the applicant has a continuing duty to promptly report to TBLS the institution of a disciplinary investigation and the receipt of a disciplinary sanction as described above and to provide additional information TBLS may request on such matters.
2. ~~The TBLS may deny certification or recertification, revoke certification, or take other appropriate action on a finding of a grievance committee or court that an applicant or board certified attorney has been guilty of professional misconduct or upon notice of the pendency of such proceedings. However, the TBLS will consider the seriousness or the underlying fact of the grievance and will consider the passage of time since such discipline and applicant's or board certified attorney's experience since that time. Failure to disclose such information is a material misrepresentation and may be cause for rejection, revocation, or other appropriate action.~~ A board certified attorney has a continuing duty to report any sanction for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct, by any authorized disciplinary authority, including a court, and shall provide additional information TBLS may request on such matters.
3. TBLS may deny certification or recertification, revoke certification, or take other appropriate action upon a finding that an applicant or board certified attorney has engaged in professional misconduct as defined above or upon notice of a pending disciplinary investigation concerning the applicant or board certified attorney. In deciding what action is appropriate, TBLS will consider the seriousness of the underlying facts included in the findings, the passage of time since the sanction, and the conduct of an applicant or board certified attorney since the findings were made.

4. Failure to disclose an investigation or sanction or the failure to respond to a request for information from TBLS on such matters will be considered a material misrepresentation and may be cause for denial, revocation, or other appropriate action by TBLS.

B. Review of Serious Crime.Criminal Conviction.

1. Applicants and~~An applicant or board certified attorneys-attorney shall furnish a statement as to disclose whether or not they have~~ he or she has ever been convicted of, or given probation or fined for, a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term "serious crime" shall include any felony. It shall also include any lesser crime, a necessary element of which as determined by the statutory or common law definition of such crime, involved improper conduct of an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit or bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. includes barratry; any felony; any lesser offense involving dishonesty, misappropriation of money or other property or conduct that adversely affects the administration of justice; and any attempt, conspiracy or solicitation of another to commit any of the foregoing crimes.
2. ~~The~~ TBLS may deny certification or recertification, revoke certification, or take other appropriate action if the~~an~~ applicant or board certified attorney has been convicted, given probation or fined for a serious crime as defined in this Section.

SECTION IV
REFERENCESPEER REVIEW

A. References in Specialty Area.Reference Requirements. ~~Applicants shall submit references to attest to applicant's competence in the specialty area. The references, themselves, shall be substantially involved in the specialty area in which applicant is seeking certification or recertification.~~

1. An applicant shall submit a minimum of five names and addresses of persons to be contacted as references to attest to his or her competence in the specialty area. For the types of references required for each specialty area, refer to the appropriate Specific Area Requirements. These persons shall be:
 - a. Substantially involved in the specialty area in which the applicant is seeking certification or recertification.

- b. Individuals who are not partners or associates of the applicant.
- c. With respect to a certification applicant, peers with whom the applicant has had dealings in the 3 years immediately preceding application.
- d. With respect to a recertification applicant, peers with whom the applicant has had dealings since certification or the most recent recertification.

- 2. TBLS may, at its option, request references from other attorneys and/or judges.
- 3. A Confidential Statement of Reference Form approved by TBLS will be submitted by TBLS directly to the selected peer and shall be returned directly to TBLS.

B. Qualification of References-Evaluation of Peer Review Information. In evaluating peer review information on an applicant, TBLS shall consider the knowledge and experience of the references in the applicant's specialty area and the nature of the dealings between the references and the applicant.

- 1. ~~The TBLS shall consider the knowledge and experience of references in the applicant's specialty area and the nature of the dealings between the references and the applicant in evaluating applications.~~
- 2. ~~Applicants shall not submit partners or associates to serve as references.~~

C. Length of Time. Applicants shall submit references for the following length of time:

- 1. ~~Certification applicants shall submit references they have dealt with in the 3 years immediately preceding application.~~
- 2. ~~Recertification applicants shall submit references they have dealt with since certification or most recent recertification.~~

D. Types of References.

- 1. ~~Applicants shall submit a list of five names and addresses of persons to be contacted as references to attest to applicant's competence in the specialty area. For the types of references required for each specialty area, refer to the appropriate Specific Area Requirements.~~
- 2. ~~Applicants shall submit a representative list of judges and/or attorneys (in addition to those listed in Section IV,D,1 above) they have dealt with in their specialty area.~~
- 3. ~~The TBLS may, at its option, send references to other attorneys and/or judges.~~

EC. Confidentiality. References concerning applicants shall be submitted on forms approved and furnished by the TBLS. All Statements of Reference received by the TBLS are shall be confidential.

- ~~FD.~~ Denial. ~~The~~ TBLs may deny certification or recertification based on information received from ~~reference~~ through the peer review process. General information concerning the denial shall be provided to the applicant subject to the confidentiality rule.

SECTION V
CONTINUING LEGAL EDUCATION

- A. Required Hours / Time Period ~~CLE Requirement.~~
1. Certification. ~~—Certification applicants~~ A certification applicant must complete 60 hours of CLE in the specialty area within the three years immediately preceding application, through December 31 of the year of application. ~~Certification applicants may not receive credit for more than 30 hours of CLE in a calendar year.~~
 2. Recertification. ~~—Recertification applicants~~ A recertification applicant must complete 100 hours of CLE in the specialty area by December 31 of each 5th year of certification. ~~Recertification applicants may not receive credit for more than 30 hours of CLE in a calendar year.~~
- B. Self Study. ~~Applicants are allowed 5 hours of self study credit during each calendar year. All self study must be in the specialty area.~~ Qualifying CLE. An applicant or board certified attorney must obtain CLE credit in the specialty area in which certification or recertification is sought by the following methods:
1. Attendance at a live CLE program, including live video conferences;
 2. Viewing or listening to an on-line CLE program;
 3. Participating in a CLE teleconference;
 4. Attendance at a showing of a CLE video;
 5. Self study such as reading cases or legal periodicals, subject to the limitation of 5 hours credit each calendar year; and
 6. Other activity in the specialty area, to be determined on an individual basis, such as:
 - a. Teaching a CLE course for attorneys or paralegals;
 - b. Participation as a panelist or speaking on a symposium or similar program;
 - c. Attendance at a lecture series or similar program sponsored by a qualified education institution or bar group;
 - d. Authorship of a book or article published in a professional publication or journal; and
 - e. Active participation in the work of a professional committee dealing with a specific problem in the specialty area.

- C. ~~Demonstration of CLE. Applicants must demonstrate their CLE by either:~~
1. ~~Attendance at and completion of CLE courses approved by the TBLS; or~~
 2. ~~Other activity in the specialty area to be determined on an individual basis, such as:~~
 - a. ~~Teaching a CLE course for attorneys or legal assistants;~~
 - b. ~~Participation as a panelist or speaking on a symposium or similar program;~~
 - c. ~~Attendance at a lecture series or similar program sponsored by a qualified education institution or Bar group;~~
 - d. ~~Authorship of a book or article published in a professional publication or journal; and~~
 - e. ~~Active participation in the work of a professional committee dealing with a specific problem in the specialty area~~

SECTION VI SUBSTANTIAL INVOLVEMENT

The General Requirements listed below are the same for each specialty area. Refer to the appropriate Specific Area Requirements unique to each specialty area.

A. Substantial Involvement and Special Competence. Percentage of Practice Requirement in the Specialty Area.

~~Certification applicants and~~ An applicant or board certified attorneys-attorney must devote ~~the a~~ minimum required percentage of time practicing in a specialty area each year as set forth in the Specific Area Requirements unique to each specialty area. ~~Failure to meet this requirement will result in denial of application or revocation of certification.~~

1. ~~Certification applicants~~ A certification applicant must devote the required percentage during each year of the 3 years immediately preceding application.
2. ~~Board~~ A board certified attorneys-attorney must devote the required percentage during each year of certification. ~~Failure to maintain the required percentage of practice may be grounds for revocation at any time during certification. Refer to the Recertification Requirements in the Specific Area Requirements.~~
3. Failure to meet the required percentage of practice may be grounds for denial or revocation.

- B. Demonstration of Experience Specific Tasks Requirements. ~~Applicants~~ An applicant must provide information concerning ~~specific tasks~~ as required by the TBLS, as ~~specified in the appropriate Specific Area Requirements concerning~~ specific tasks he or she has performed in the applicable specialty area. ~~The~~ In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of ~~matters~~ the tasks handled by applicants ~~an applicant~~ in the specialty area ~~in evaluating experience.~~
- C. Exceptions. ~~Certification applicants are~~ A certification applicant is expected to meet the ~~tasks requirements~~ listed in the Specific Area Requirements in the specialty area. ~~The~~ TBLS may permit exceptions for an applicant who does not meet the task requirements specified in an individual specialty area. For the substantial involvement required for each specialty area, please refer to the appropriate Specific Area Requirements.
1. Judicial Experience.
 - a. Certification Applicant. ~~The~~ TBLS may permit a certification applicant to substitute judicial experience appropriate to each specialty area. In making this determination, ~~the~~ TBLS may take into consideration the nature, complexity, and duration of the ~~matters~~ the certification applicant has handled in the specialty area. The judicial experience shall be at least ~~be~~ equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of ~~the~~ TBLS.
 - b. Board Certified Attorneys ~~Attorney and Recertification Applicants~~ Applicant. ~~The~~ TBLS may permit a board certified attorney or recertification applicant who is serving as a full-time county, state or federal trial, appellate, probate, family, or bankruptcy judge (including a U.S. magistrate judge or Texas associate judge) to remain certified during his or her judicial service). ~~subject to the following conditions:~~
 - (1) ~~The annual and recertification fees for attorneys affected by this provision shall be the same as the fees for other certified attorneys. All requirements for the attorney's recertification, other than the payment of fees, shall be suspended until December 31 of the calendar year following the date on which the certified attorney ceases to serve as a full-time judge. A board certified attorney or recertification applicant who is affected by this provision shall continue to pay the annual fee.~~

- (2) ~~If the~~ a board certified attorney desires to continue certification after December 31 of the calendar year which he or she ceases to serve as a full-time judge, ~~the attorney he or she shall timely file an application for complete the~~ recertification process with ~~the~~-TBSL and shall comply with the TBSL Rules. A board certified attorney whose certification was extended by reason of service as a full-time judge must satisfy all the requirements for recertification except that, for purposes of the initial recertification only, the substantial involvement requirement shall be waived and the CLE requirement shall be prorated based on the year in which the board certified attorney ceased judicial service.
2. Unusual or Exceptional Experience. TBSL may permit a certification applicant to substitute unusual or exceptional experience for one or more of the specific area requirements in the specialty area. In making this determination, ~~the~~-TBSL may take into consideration the nature, complexity, and duration of the matters that the certification applicant has handled in the specialty area. The unusual or exceptional experience shall at least be equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of ~~the~~-TBSL.

SECTION VII EXAMINATION

- A. Passing of an Examination. A certification applicant must pass a written examination applied uniformly to all certification applicants to demonstrate sufficient knowledge, proficiency, and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public.
- B. Failure of an Examination. After a certification applicant has taken and failed an examination 3 times in a specialty area, the applicant is ineligible to apply for the next 3 years' examination in that specialty area.