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Melissa M. Serfass

University of Arkansas at Little Rock William H. Bowen School of Law, mmserfass@ualr.edu

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STANDARDS FOR CERTIFICATION OF APPELLATE SPECIALISTS

Melissa M. Serfass*

Efforts to formally recognize legal specialization have been developing since 1950, when the first of many ABA committees was appointed to study the issue.¹ In 1979, after years of committee study and observations of the specialization plans in California (which, in 1973, was the first state to adopt a specialization program), Texas, Florida, and New Mexico, the ABA House of Delegates adopted the Model Plan of Specialization. The Model Plan, drafted to assist states in implementing state-sponsored certification plans, drew on successful features of existing state plans.² The Model Standards for Specialty Areas, published in 1990 by the ABA Standing Committee on Specialization, contain standards for certification of lawyers in twenty-four specialty areas of law, including appellate practice.³

Since that time, twenty-one states have adopted certification plans. However, only five states—California, Florida, New Mexico, North Carolina, and Texas—offer some type of appellate practice certification. These five states vary in the labels they use and sometimes in the appellate practice specialties they recognize. For example, California attorneys may certify as specialists in “Appellate Law,” while New Mexico certifies attorneys in “Appellate Practice.” Texas offers a specialty in “Civil Appellate Law.” In Florida, an attorney

* Electronic Resources and Reference Librarian and Associate Professor of Law Librarianship, UALR School of Law.

1. Michael Ariens, *Know the Law: A History of Legal Specialization*, 45 S.C. L. REV., 1003, 1042 (1994).

2. Judith Kilpatrick, *Specialist Certification for Lawyers: What is Going On?*, 51 MIAMI L. REV. 273, 285-86 (1997).

3. *Id.* at 288.

may specialize in "Appellate Law" or "Criminal Appellate Law." In North Carolina, the Criminal Law specialty includes a subspecialty in "Criminal Appellate Practice."

Despite these variations, the five state plans have many features in common with each other and with the structure proposed in the ABA Model Plan of Specialization and the Model Standards for Specialty Areas.⁴ In each state the state supreme court has general jurisdiction over its program and a board of legal specialization administers the program and creates standards and procedures for certifying specialists.⁵ Each program has specific standards for an appellate specialty, which must be read in conjunction with the state's overall plan of specialization. The programs all have an advisory committee for each specialty area.

Standards an attorney must meet to obtain certification as an appellate specialist in the five states fall into four main categories:

1. Attorneys must show a high level of experience, or substantial involvement, in the specialty field. This is demonstrated through time spent in the practice of the specialty, usually measured as a percentage of practice devoted to the specialty area, or through the completion of specific tasks or types of tasks. In most cases, a combination of time-spent and specific tasks completed is required.

2. Certification applicants must be favorably evaluated by attorneys and judges who are familiar with their work.

3. Applicants must have completed significant educational requirements in the specialty field.

4. The current versions of the Model Plan of Specialization and the Model Standards for Specialty Areas may be found in MODEL STANDARDS FOR SPECIALTY AREAS (American Bar Association, 1988).

5. This kind of program, where an entity approved by the state supreme court creates and administers the program, follows the direct certification model. Kilpatrick, *supra* note 2 at 290. Most certified lawyers in the United States today have been certified by this type of program. ABA Standing Comm. on Specialization, *Lawyer Specialty Certification Today* (visited Aug. 25, 1999) <<http://www.abanet.org/specialization/info.html>>. A few jurisdictions follow a private certification model, where a state accredits certification programs that are offered by private certification organizations and state bar sections. The ABA also accredits specialty certification programs for lawyers in particular fields of law. See ABA Standing Comm. on Specialization, *Sources of Certification* (visited August 25, 1999) <<http://www.abanet.org/specialization/source.html>> for a list of the specialist certification program sources.

4. Applicants must demonstrate a high level of knowledge by passing a written or oral examination.

The following charts outline the certification requirements in each state.

CALIFORNIA—APPELLATE LAW

California's legal specialization program is administered by the Board of Legal Specialization and an Advisory Commission for each of the eight specialty fields. The program requirements for certification of specialists in California may be found in RULES GOVERNING THE STATE BAR OF CALIFORNIA PROGRAM FOR CERTIFYING LEGAL SPECIALISTS (1997) (hereinafter RULE), which contains the guidelines for all specialties. These must be read in conjunction with THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN APPELLATE LAW (hereinafter STANDARD), which contain the specific requirements for appellate practice. See <<http://www.calbar.org/lgl-spec.htm>> for information on the program.

General Information	
Eligibility for application	An applicant shall "[b]e an active member of the State Bar of California and shall have been engaged in the practice of law in the area in which certification is sought for at least twenty-five percent 25% of the applicant's time spent in occupational endeavors during the previous three (3) years." RULE 4.1.
Appellate practice defined	"Appellate law is the practice of law dealing with procedural and substantive aspects of matters before state and federal appellate courts." STANDARD 1.0.
Purpose of specialization plan	"The purpose of the Rules Governing the State Bar of California Program for Certifying Legal Specialists is to establish a program for certifying specialists in specified areas of law, to identify to the public attorneys who have demonstrated proficiency in the specialty fields and to encourage attorney competence." RULE 1.0.
Designation as certified specialist	"A certified specialist shall, when offering legal services pursuant to this program, refer to himself or herself as certified by the 'State Bar of California Board of Legal Specialization.'" RULE 17.0.
Substantial Involvement	
Time spent	An applicant must show substantial involvement in practice of appellate law within 5 years immediately preceding application. STANDARD 2.0

	<p>Applicant must submit 125 total points. At least 75 must be accumulated during 5 years immediately preceding application. STANDARD 2.1</p>
Task requirements	<p>“Substantial involvement includes, but is not limited to advising clients with regards to appeals, identifying appealable orders, designating reviewing and evaluating the record, preparing briefs, appellate motions, petitions for extraordinary writ, petitions for review, habeas corpus petitions and presenting oral arguments.” Standard 2.0.</p> <p>Specific appellate practice tasks are listed and assigned a point value.</p> <p>Representative tasks include:</p> <ul style="list-style-type: none"> • handling an appeal, including preparation of the opening or responding brief; • handling a petition for extraordinary writ or a petition for writ of habeas corpus in an appellate court; • preparing opposition to petition for writ; • supervisory handling of an appeal or writ; • preparing petition or answer to petition for review or certiorari. <p>STANDARD 2.1.1-2.1.3.</p> <p>Former appellate justices and law clerks are awarded points based on years of service. STANDARD 2.1.4.1 and 2.</p> <p>Attorney must have presented 7 oral arguments, during a career, in an approved court. STANDARD 2.2.</p> <p>Alternative or additional forms of appellate practice may be considered by the Appellate Advisory Commission. STANDARD 2.3.</p>
Peer Review	
	<p>Applicant must submit the names of three attorneys or judges who are familiar with the tasks upon which the applicant has relied to satisfy the task requirement. Each reference will be asked to submit the names of two additional references familiar with the applicant’s proficiency. The Commission may seek additional references at its discretion. RULE 9.1.</p> <p>An application will not be acted upon until at least five favorable references have been received. The Commission may reduce the number of references required to no less than two, in appropriate instances. RULE 9.2.</p>
Education	
	<p>“An applicant must show that, within the 3 years immediately preceding application, he or she has completed not less than 45 hours of educational activities specifically approved for appellate law, with at least 9 hours in Appellate and/or Writ Practice.” STANDARD 3.0.</p>

Examination	
	A written examination is required. RULE 4.4. "The purpose of the examination is to verify that an applicant has a basic knowledge of the usual procedures and substantive law that should be common to specialists in the field of law." RULE 8.1.
Recertification	
	Required every five years from the date of certification or recertification. RULE 12.0.

FLORIDA—APPELLATE LAW

The Board of Legal Specialization and Education, along with a committee for each of the 17 specialty areas, administers the Florida certification program. Rules governing certification, which are referenced in the two following charts, may be found in RULES REGULATING THE FLORIDA BAR, Rules 6-1.1-6.21-4 (1998). The Rules are available from the Florida Bar website at <<http://www.flabar.org/newflabar/lawpractice/Rules>>.

General Information	
Eligibility for application	"A member in good standing of The Florida Bar who is currently engaged in the practice of law and who meets the area's standards may apply for certification." RULE 6-3.5(b).
Appellate practice defined	"Appellate practice is the practice of law dealing with the recognition and preservation of error committed by lower tribunals, and the presentation of argument concerning the presence or absence of such error to state or federal appellate courts through brief writing, writ and motion practice, and oral argument." RULE 6-13.2(a).
Purpose of specialization plan	"The purpose of the standards is to identify those lawyers who engage in appellate practice and have the special knowledge, skills, and proficiency to be properly identified to the public as certified appellate lawyers." RULE 6-13.1.
Designation as certified specialist	"A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a 'Board Certified Appellate Lawyer.'" RULE 6-13.1. Certified attorneys may list their certification on their letterhead, business cards, office door, in the yellow pages or by other means allowed by the Rules of Professional Conduct. RULE 6-3.8(a).
Substantial Involvement	
Time spent	At least 5 years in the actual practice of law, with at least 30% spent in substantial and direct participation in appellate practice. RULE 6-13.3(a)(1).
	3 of 5 years must be immediately preceding application. During up to 2 of those 3 years, applicant may have served as an appellate judge, or as clerk or staff attorney of an appellate court. RULE 6-13.3(a)(1). The 5 years of appellate practice must be sufficient to demonstrate special competence as an appellate lawyer. RULE 6-13.3(a)(1).

	Appellate practice certification committee may waive up to 2 of the 3 years' substantial involvement in some circumstances. Substantial involvement in the year preceding application may not be waived. RULE 6-13.3(a)(4).
Task requirements	<p>"Substantial involvement includes brief writing, oral arguments, and extraordinary writs." RULE 6-13.3(a)(4).</p> <p>Sole or primary responsibility in:</p> <ul style="list-style-type: none"> • "at least 25 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or responses thereto in extraordinary writ cases." RULE 6-13.3(a)(2). • at least 5 appellate oral arguments (committee may waive for good cause). RULE 6-13.3(a)(3).
Peer Review	
	<p>To attest to applicant's substantial involvement and competence in appellate practice, applicant must submit:</p> <ul style="list-style-type: none"> • Names and addresses of at least 4 lawyers, not associates or partners, who are familiar with applicants's practice and who are also involved in appellate practice. RULE 6-13.3(b)(1). • Names and addresses of at least 2 judges before whom the applicant has appeared on appellate matters within the last 2 years. RULE 6-13.3(b)(2). <p>At its option, the appellate practice certification committee may send reference forms to other attorneys and judges. RULE 6-13.3(b)(3).</p>
Education	
	Applicant shall make satisfactory showing that within 3 years immediately preceding application he or she has accumulated at least 45 hours of approved CLE in the field of appellate practice. RULE 6-13.3(c).
Examination	
	<p>Exam is required.</p> <p>In order "to justify the representation of special competence to the legal profession and public," the applicant must pass an exam to "demonstrate sufficient knowledge, proficiency and experience in appellate practice." RULE 6-13.3(d).</p> <p>The exam includes recognition, preservation, and presentation of trial error and knowledge and application of state and federal rules of appellate procedure. RULE 6-13.3(d).</p>
Recertification	
	Recertification is required every 5 years. RULE 6-3.6(a). Appellate recertification rules are found in RULE 6-13.4(a)-(f).

FLORIDA—CRIMINAL APPELLATE LAW

General Information	
Eligibility for application	"A member in good standing of The Florida Bar who is currently engaged in the practice of law and who meets the area's standards may apply for certification." RULE 6-3.5(b).
Criminal law defined	"Criminal law is the practice of law dealing with the defense and prosecution of misdemeanor and felony crimes in state and federal trial and appellate courts." RULE 6-8.2(a).
Purpose of specialization plan	"The purpose of the standards is to identify those lawyers who practice criminal law and have the special knowledge, skills, and proficiency to be properly identified to the public as certified criminal trial or appellate lawyers." RULE 6-8.1.
Designation as certified specialist	<p>"A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a 'Board Certified Criminal Appellate Lawyer.'" RULE 6-8.1.</p> <p>Certified attorneys may list their certification on their letterhead, business cards, office door, in the yellow pages or by other means allowed by the Rules of Professional Conduct. RULE 6-3.8(a).</p>
Substantial Involvement	
Time spent	<p>At least 5 years in actual practice of law; at least 30% spent in active participation in criminal appellate law. RULE 6-8.5(a)(1).</p> <p>3 of 5 years must be immediately preceding application, or, during those 3 years, an applicant may have served as judge. RULE 6-8.5(a)(1).</p> <p>The 5 years of criminal appellate practice must be sufficient to demonstrate special competence as a criminal appellate lawyer. RULE 6-8.5(a)(3).</p> <p>Individuals who have served as judges may ask the criminal law certification committee to waive 2 of the 3 years' substantial involvement for good cause shown. Substantial involvement in the year preceding application may not be waived. RULE 6-8.5(a)(3).</p>
Task requirements	<p>"Substantial involvement includes brief writing, motion practice, oral arguments, and extraordinary writs." RULE 6-8.5(a)(3).</p> <p>Applicant must have been involved in representation of at least 25 appellate actions. RULE 6-8.5(a)(2).</p> <p>At the discretion of the committee, involvement in protracted litigation may be considered for satisfaction in part of the 25 appellate actions. RULE 6-8.5(a)(2).</p>

Peer Review	
	<p>To attest to applicant's substantial involvement and competence in criminal appellate practice, applicant must submit:</p> <ul style="list-style-type: none"> • Names and addresses of at least 4 lawyers, not associates or partners, who are familiar with an applicant's practice and who are also substantially involved in criminal appellate law. RULE 6-8.5(b)(1). • Names and addresses of at least 2 judges before whom the applicant has appeared on criminal appellate matters within the last 2 years. RULE 6-8.5(b)(2). <p>At its option, the criminal law certification committee may send reference forms to other attorneys and judges. RULE 6-8.5(b)(3).</p>
Education	
	<p>Applicant shall make a satisfactory showing that within 3 years immediately preceding application he or she has accumulated at least 45 hours of approved CLE in the field of criminal law. RULE 6-8.5(c)(1).</p>
Examination	
	<p>Exam is required.</p> <p>In order "to justify the representation of special competence to the legal profession and public," the applicant must pass an exam to "demonstrate sufficient knowledge, proficiency and experience in criminal law, application of constitutional principles, and rules of criminal and appellate procedure." RULE 6-8.5(d).</p>
Recertification	
	<p>Recertification is required every 5 years. RULE 6-3.6(a).</p> <p>Criminal appellate recertification rules are found in RULE 6-8.6(a)-(f).</p>

NORTH CAROLINA—CRIMINAL APPELLATE PRACTICE

The North Carolina Plan of Legal Specialization is administered by the Board of Legal Specialization and a specialty committee established for each specialty area. The rules cited below, which govern certification in criminal appellate practice, may be found in RULES OF NORTH CAROLINA STATE BAR (1998).

General Information	
Eligibility for application	<p>Applicant must pay required fee, comply with the minimum standards in Rule .1720, and meet standards for the specialty area. RULE D.1720(a).</p> <p>Applicant must be licensed and currently in good standing to practice law in North Carolina. RULE D.1720(a)(1).</p>
Criminal appellate practice defined	<p>“The specialty of criminal law is the practice of law dealing with the defense or prosecution of those charged with misdemeanor and felony crimes in state and federal trial and appellate courts.” RULE D.2502.</p> <p>The subspecialty of criminal appellate practice is defined as “the practice of criminal law at the appellate court level.” RULE D.2502(a).</p>
Purpose of specialization plan	<p>“The purpose of this plan of certified legal specialization is to assist in the delivery of legal services to the public by identifying to the public those lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field, so that the public can more closely match its needs with available services; and to improve the competency of the bar by establishing an additional incentive for lawyers to participate in continuing legal education and meet the other requirements of specialization.” RULE D.1701.</p>
Designation as certified specialist	<p>A lawyer who qualifies as a specialist by meeting the subspecialty of criminal appellate practice standards may represent that he or she is a “Board Certified Specialist in Criminal Appellate Practice.” RULE D.2503.</p>
Substantial Involvement	
Time spent	<p>“Applicant must have been engaged in the active practice of law for at least 5 year prior to certification with a substantial involvement in the area of criminal law.” RULE D.2505(b)(2)(A).</p> <p>Three years of the practice requirements may be fulfilled by sitting as an appellate court judge for at least one year of the three years immediately preceding application. RULE D.2505(b)(2)(B)(ii).</p>

<p>Task requirements</p>	<p>During the applicant's entire legal career he or she must have been participating counsel of record in the following criminal proceedings:</p> <ul style="list-style-type: none"> • Five felony jury trials submitted to a jury. RULE D.2505(b)(1)(A)(i). • Ten additional jury trials for any offense, submitted to a jury. RULE D.2505(b)(1)(A)(ii). • Fifty additional criminal matters seen to conclusion in the state district or superior court, or the U.S. district court. RULE D.2505(b)(1)(A)(iii). • Any one of the following: <ul style="list-style-type: none"> • Two oral appearances before a North Carolina or United States appellate court. RULE D.2505(b)(1)(A)(iv)(a). • Three written appearances before any appellate court in which the applicant had primary responsibility for preparing the record on appeal and brief. RULE D.2505(b)(1)(A)(iv)(b). • Twenty-five additional criminal trials submitted to a judge or jury for decision in any jurisdiction. RULE D.2505(b)(1)(A)(iv)(c). <p>Also during the applicant's entire legal career, he or she must have:</p> <ul style="list-style-type: none"> • "[R]epresented a party in at least 15 criminal appeals, 5 of which must have been with the two years preceding the application." RULE D.2505(b)(2)(B)(i). • "[H]ad substantial involvement in criminal appellate work, including brief writing, motion practice, oral arguments, and extraordinary writs." RULE D.2505(b)(2)(B)(ii). <p>In some situations, the committee may recommend and the board may approve substitutions for some requirements, where the profession or geographical location prohibits completion of the above requirements. RULE D.2505(b)(2)(C).</p>
<p>Peer Review</p>	
	<p>"All references must be licensed and in good standing to practice in North Carolina and must be familiar with the competence and qualifications of the applicant in the specialty field." RULE D.2505(d)(2).</p> <p>To attest to the applicant's substantial involvement and competence in criminal appellate practice, he or she must submit:</p> <ul style="list-style-type: none"> • Names and addresses of four attorneys of generally recognized stature who are familiar with the applicant's practice, and are substantially involved in criminal appellate practice themselves. RULE D.2505(d)(3)(B)(i). • Names and addresses of two judges before whom he or she has appeared in criminal appellate matters in the last two years. RULE D.2505(d)(3)(B)(ii).

	<ul style="list-style-type: none"> For the last two appellate matters handled, applicant shall provide names and addresses of opposing counsel, judges, and co-counsel. All briefs filed in these matters must also be provided. RULE D.2505(d)(3)(B)(iii). <p>Relatives may not serve as references, nor may partners or associates of the applicant. RULE D.2505(d)(3)(C).</p>
Education	
	<p>Forty hours of accredited CLE must be earned in the three years preceding application. These hours must include:</p> <ul style="list-style-type: none"> “at least 34 hours in skills pertaining to criminal law, such as evidence, substantive criminal law, criminal procedure, criminal trial advocacy, criminal trial tactics, and appellate advocacy” RULE D.2505(c)(1)(A). at least 6 hours in the area of ethics and criminal law. RULE D.2505(c)(1)(B).
Examination	
	<p>A written exam is required. RULE D.2505(e).</p> <p>Criminal appellate practice certification applicants must pass the examination in criminal law as well as the criminal appellate practice examination. RULE D.2505(e)(3).</p> <p>The exam is designed to test the applicant’s knowledge in:</p> <ul style="list-style-type: none"> North Carolina and Federal Rules of Evidence. RULE D.2505(e)(2)(A)(i). State and Federal criminal procedure. RULE D.2505(e)(2)(A)(ii). Constitutional law. RULE D.2505(e)(2)(A)(iii). Appellate procedure and tactics. RULE D.2505(e)(2)(A)(iv). Trial procedure and tactics. RULE D.2505(e)(2)(A)(v). Criminal substantive law. RULE D.2505(e)(2)(A)(vi). North Carolina Rules of Appellate Procedure. RULE D.2505(e)(2)(A)(vii).
Recertification	
	<p>Certification is for five years. Recertification is required. RULE D.2506.</p>

NEW MEXICO—APPELLATE PRACTICE

The Board of Legal Specialization administers New Mexico's attorney specialization plan. Recognition as an appellate specialist is governed by the RULES OF LEGAL SPECIALIZATION (1995) (hereinafter RULE) and by the STANDARDS FOR LEGAL SPECIALIZATION APPELLATE PRACTICE (hereinafter STANDARD). The Rules are available from the State Bar of New Mexico website at <<http://www.nmbar.org/statebar/courtregprograms/legspecrules.htm>>.

General Information	
Eligibility for application	"The applicant must be licensed, currently be in good standing to practice law in this state and carry a minimum of two hundred fifty thousand dollars (\$250,000) malpractice insurance coverage, unless the applicant is practicing exclusively as an employee of a governmental agency or exclusively as an employee as in-house corporate counsel for a single corporate entity." RULE 19-203 (A).
Appellate practice defined	"The specialty field of Appellate Practice is defined as the practice of law dealing with all procedural and substantive aspects of all matters in federal and state appellate courts." STANDARD 2.
Purpose of specialization plan	"The Purpose of the Rules of Legal Specialization is to assist in the delivery of legal services to the public by: <ul style="list-style-type: none"> • Providing greater access by the public to appropriate legal services; • Identifying and improving the quality and competence of legal services; and • Providing appropriate legal services at reasonable cost." RULE 19-201.
Designation as certified specialist	A lawyer certified by the Board in the field of Appellate Practice may represent that he or she is a "New Mexico Board of Legal Specialization recognized specialist in Appellate Practice." STANDARD 1. To the extent permitted by the Rules of Professional Conduct, board recognized specialists may state in legal advertisements or solicitations that they are "New Mexico Board of Legal Specialization recognized specialist in the area of _____." RULE 19-202(G).

Substantial Involvement

Time spent	<p>STANDARD 4.1.1 contains requirements for time spent in appellate practice. An applicant may qualify under this standard, or under 4.1.2, which covers the number of appellate matters handled. STANDARD 4.1.</p> <p>During the 3 years immediately preceding application, applicant must have spent not less than 25% of a full-time (40 hour) work week in appellate practice. STANDARD 4.1.1.</p> <p>STANDARD 4.1.1 contains requirements for time spent in appellate practice. An applicant may qualify under this standard, or under 4.1.2, which covers the number of appellate matters handled. STANDARD 4.1.</p> <p>During the 3 years immediately preceding application, applicant must have spent not less than 25% of a full-time (40 hour) work week in appellate practice. STANDARD 4.1.1.</p> <p>Appellate practice, for purpose of this requirement, includes “any legal services related to the appellate proceeding or extraordinary writ proceeding performed by an attorney primarily responsible for the matter.” STANDARD 4.1.1(A).</p> <p>Time spent on the following shall be equivalent to time spent in appellate practice for purposes of this requirement:</p> <ul style="list-style-type: none"> • Preparation for or attendance at Appellate Rules Committee meetings; • Preparation and performance of teaching or lecturing courses in Appellate Practice, legal research, legal writing, or oral advocacy at an accredited law school or an accredited CLE program; • Attendance at such courses or programs. STANDARD 4.1.1(B). <p>Service as a judge or justice on a state or federal appellate court, as a staff attorney for certain appellate courts, or as a law clerk to a state or federal appellate judge may count toward part of the time spent requirement in some circumstances. STANDARD 4.1.1(C) and (D).</p>
Task requirements	<p>STANDARD 4.1.2 covers the number of appellate matters handled. An applicant may qualify under this standard, or under 4.1.1, which contains requirements for time spent in appellate practice. STANDARD 4.1.</p> <p>During the 3 years immediately preceding application, applicant must have been primarily responsible for handling 9 or more appeals through the briefing on the merits. STANDARD 4.1.2.</p>

	<p>“Appeal” shall mean one of the following:</p> <ul style="list-style-type: none"> • An appeal from a NM district court or administrative agency to the NM Supreme Court or Court of Appeals, or a comparable appeal from another state. STANDARD 4.1.2(A)(i). • Proceedings in a state appellate court on a writ of error treated as an appeal. STANDARD 4.1.2(A)(ii). • An action removed to the NM Supreme Court from the State Corporation Commission. STANDARD 4.1.2(A)(iii). • An appeal to a federal circuit court of appeals from a federal district or bankruptcy court, or federal administrative agency. STANDARD 4.1.2(A)(iv). • Proceedings on a petition for writ of certiorari or appeal to the United States Supreme Court that is granted. STANDARD 4.1.2(A)(v). • An interlocutory appeal to a state or federal appellate court that is granted. STANDARD 4.1.2(A)(vi). <p>“Briefing on the merits means the filing by the applicant of the main brief on the merits of the appeal. It does not include memoranda in support of, or opposition to, disposition proposed in a calendar notice.” STANDARD 4.1.2(B).</p> <p>An appeal that meets the criteria of 4.1.2(A)-(B) may count toward the required number of appeals if an applicant performed any substantial services in connection with that appeal during the 3 years preceding application. STANDARD 4.1.2(C).</p> <p>Applicant must submit the following documents prepared primarily by him or her:</p> <ul style="list-style-type: none"> • a brief in chief • an answer brief • a memorandum in opposition to calendar notice • either a motion for rehearing, petition for certiorari, petition for extraordinary writ, or application for interlocutory appeal. STANDARD 4.4. <p>A judge, staff attorney or law clerk may request the board to accept equivalent documents prepared by them during their service to the court in lieu of some of the required submissions. STANDARD 4.4.</p>
Peer Review	
	<p>Applicant shall provide 5 references who are familiar with his or her competence and qualifications within the 3 years preceding application. Two shall be sitting or former state or federal appellate judges. Three must be attorneys. At least one of the attorneys must have opposed the applicant in appellate proceedings. STANDARD 4.3.</p>

Education	
	Applicant must accumulate not less than 30 hours of accredited CLE in appellate practice, legal research, legal writing or oral advocacy in the three years preceding application. STANDARD 4.2.
Examination	
	No examination required. STANDARD 4.5.
Recertification	
	Recertification is required every 5 years. STANDARD 5.

TEXAS—CIVIL APPELLATE LAW

Attorney certification in Texas is administered by the Texas Board of Legal Specialization (TBLS) and regulated by the TEXAS PLAN FOR RECOGNITION AND REGULATION OF SPECIALIZATION IN THE LAW (1999) (hereinafter PLAN). An Advisory Committee exists for each of the 14 areas in which specialists may be certified. Certification requirements are published in STANDARDS FOR ATTORNEY CERTIFICATION (1999). The Standards are divided into GENERAL REQUIREMENTS (hereinafter GEN. REQ.), which apply to all specialty areas, and in SPECIFIC AREA REQUIREMENTS FOR CIVIL APPELLATE LAW (hereinafter SPEC. REQ.). See the TBLS web site at <<http://www.tbls.org/>>.

General Information	
Eligibility for application	<p>Applicants must be active members in good standing of the State Bar of Texas. GEN. REQ. II(A)(1).</p> <p>“For the three years immediately preceding application, a certification applicant must have maintained a Texas office from which the applicant personally conducts business an average of at least 3 days per week, until certification is achieved.” GEN. REQ. II(A)(2)(a).</p>
Appellate practice defined	<p>“Civil appellate law is the practice of law involving proceedings brought before a civil appellate court either by appeal of a final judgment or appealable interlocutory order or by an original proceeding in the appellate court. The practice of civil appellate law which qualifies for substantial involvement and special competence should generally cover multiple areas of procedure and substantive law.” SPEC. REQ. I(A).</p> <p>Service as a judge, briefing, or staff attorney on a civil appellate court is also considered the practice of civil appellate law. SPEC. REQ. I(A).</p>
Purpose of specialization plan	<p>The purpose of the legal specialization program is to serve the public interest and advance the standards of the legal profession by promoting the “availability, accessibility and quality of the services of attorneys to the public in particular areas of the law.” PLAN I.</p>
Designation as certified specialist	<p>Any attorney holding a current certificate of special competence is entitled to state that they are certified by the TBLS in a particular area, in the following words:</p> <p>“Board Certified (Area of Specialization) Texas Board of Legal Specialization.”</p>

	<p>The certification may be stated in recognized legal directories or law lists; in notices mailed to attorneys, clients, former clients, friends and relatives; in telephone directories; and on business cards or on letterhead under the individual listing of the attorney's name. All such listings must conform to the Texas Disciplinary Rules of Professional Conduct. PLAN X(C)(1)-(4).</p>
<h3>Substantial Involvement</h3>	
<p>Time spent</p>	<p>Substantial involvement and special competence in civil appellate law practice during the 3 years immediately preceding application. SPEC. REQ. I(B).</p> <p>During each of the 3 years immediately preceding application, applicant must have devoted at least 25% of his or her time to the practice of civil appellate law. SPEC. REQ. I(B)(1).</p>
<p>Task requirements</p>	<p>Applicants shall provide information that may be required by the TBLS regarding their participation in:</p> <ul style="list-style-type: none"> • "Civil appeals in any appellate court in which briefs were filed or oral argument performed by applicant." SPEC. REQ. I(B)(2)(a). • "Extraordinary proceedings in an appellate court such as Petition for Writ of Mandamus or Habeas Corpus handled or defended." SPEC. REQ. I(B)(2)(b). <p>Applicants must have handled all or a substantial part of at least 12 civil appellate cases. At least 6 of these must have been in the 3 years immediately preceding application. SPEC. REQ. I(B)(3).</p> <p>The applicant must show that all 12 cases were fully briefed on the merits at appellate level. SPEC. REQ. I(B)(3)(a).</p> <p>Applicant must have been lead counsel in at least 6 of the cases. SPEC. REQ. I(B)(3)(b).</p> <p>Applicant must have presented oral argument in at least 6 of the cases. SPEC. REQ. I(B)(3)(c).</p> <p>At least 6 of the cases must have involved an appeal from a final judgement on the merits. SPEC. REQ. I(B)(3)(d).</p> <p>The appellate court must have issued an opinion on the merits in at least 5 of the cases. SPEC. REQ. I(B)(3)(e).</p> <p>At least 3 of the cases must have involved the prosecution or defense of a petition to the highest court of the jurisdiction to review the decision of an intermediate appellate court. SPEC. REQ. I(B)(3)(f).</p> <p>Five years of service for an appellate court as a briefing and/or staff attorney may be considered equivalent of the above requirements. Less than 5 years service may be considered proportionally. SPEC. REQ. I(B)(4).</p>

	At its discretion, the TBLS may allow judicial experience in a specialty area to substitute for other task requirements. GEN. REQ. (VI)(C)(1).
Peer Review	
	<p>Applicants must provide the following references to attest to their competence in the practice of civil appellate law:</p> <ul style="list-style-type: none"> • Three Texas attorneys familiar with applicant's civil appellate law practice. SPEC. REQ. II(A). • One Texas attorney who has tried a civil appellate law matter with or against applicant. SPEC. REQ. II(B). • One judge of an appellate court in Texas before whom applicant has appeared as an advocate in a civil appellate matter. SPEC. REQ. II(C) <p>References must be substantially involved in the same specialty area. GEN. REQ. (IV)(A).</p> <p>Applicants may not use partners or associates as references. GEN. REQ. (IV)(B)(2).</p> <p>Dealings with references must have taken place within the 3 years immediately preceding application. GEN. REQ. (IV)(C)(1).</p> <p>The TBLS has the option of sending references to other attorneys or judges. GEN. REQ. (IV)(D)(3).</p>
Education	
	"Certification applicants 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." GEN. REQ. (V)(A)(1).
Examination	
	<p>Written examination is required.</p> <p>"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." GEN. REQ. II(H).</p>
Recertification	
	<p>Recertification is required every five years. GEN. REQ. II(D).</p> <p>Recertification standards are found throughout the GENERAL REQUIREMENTS and in SPEC. REQ. I(C).</p>