

IN THE SUPREME COURT OF TEXAS

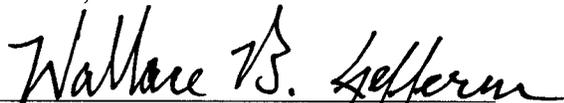
Misc. Docket No. 10 - **9163**

**APPROVAL OF AMENDMENTS TO THE ATTORNEY STANDARDS FOR
CERTIFICATION OF THE TEXAS BOARD OF LEGAL SPECIALIZATION
(PART II – SPECIFIC AREA REQUIREMENTS)
AND TO THE TEXAS PLAN FOR RECOGNITION AND REGULATION
OF SPECIALIZATION IN THE LAW**

ORDERED that:

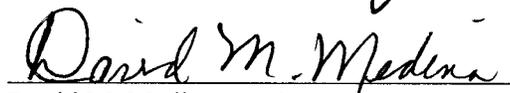
The following amendments to the Attorney Standards for Certification of the Texas Board of Legal Specialization concerning Part II-Specific Area Requirements and to the Texas Plan for Recognition and Regulation of Specialization in the Law are approved.

Signed and Entered, this 28th day of September, 2010.


Wallace B. Jefferson, Chief Justice

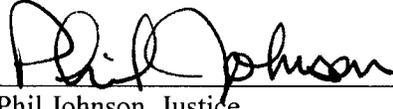

Nathan L. Hecht, Justice


Dale Wainwright, Justice

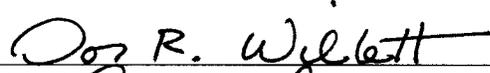

David M. Medina, Justice



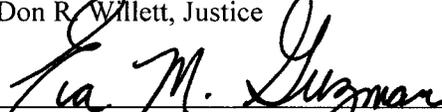
Paul W. Green, Justice



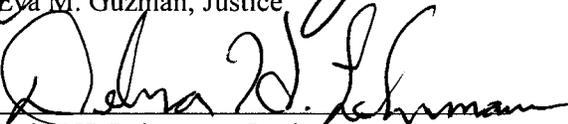
Phil Johnson, Justice



Don R. Willett, Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

PART II SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to each individual specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for each specialty area. You will also need to refer to PART I, GENERAL REQUIREMENTS for requirements that apply to all specialty areas.

<u>Section Number</u>	<u>Specialty Area</u>	<u>Area ID</u>	<u>Year Started</u>
Section I	Criminal Law	CR	1975
Section II	Family Law	FM	1975
Section III	Labor and Employment Law	LB	1975
Section IV	Estate Planning and Probate Law	EP	1977
Section V	Civil Trial Law	CT	1978
Section VI	Personal Injury Trial Law	PI	1978
Section VII	Immigration and Nationality Law	IM	1979
Section VIII	Real Estate Law	RE	1983
	Commercial	RC	<u>1983</u>
	Farm and Ranch	RF	<u>1983</u>
	Residential	RR	<u>1983</u>
Section IX	Tax Law	TX	1983
Section X	Bankruptcy Law	BK	
	Consumer	CB	1984
	Business	BB	1988
Section XI	Oil, Gas and Mineral Law	OG	1986
Section XII	Civil Appellate Law	AP	1987
Section XIII	Administrative Law	AD	1989
Section XIV	Consumer and Commercial Law	CS	1993
Section XV	Juvenile Law	JV	2001
Section XVI	Health Law	HE	2002
Section XVII	Workers' Compensation Law	WC	2004
<u>Section XVIII</u>	<u>Criminal Appellate Law</u>	<u>CA</u>	<u>2010</u>

SECTION XVIII

CRIMINAL APPELLATE LAW

(Area ID: CA / Year Started: 2010)

A. DEFINITIONS.

1. Criminal appellate law is the practice of law in a criminal appellate case, which includes the following proceedings:
 - a. Appeal or defense of a judgment or order in a criminal law matter, or juvenile adjudication, to an appellate court;
 - b. Preparation of, or responding to, a petition for discretionary review or related brief to the Texas Court of Criminal Appeals;
 - c. Prosecution or defense of an application for an extraordinary matter, such as Petition for Writ of Mandamus or Application for Original Habeas Corpus, to the Texas Court of Criminal Appeals, a Texas Court of Appeals, United States District Court, or United States Circuit Court of Appeals, in a criminal matter;
 - d. Prosecution or defense of an application for post-conviction writ of habeas corpus from a misdemeanor conviction to a statutory county court exercising habeas corpus jurisdiction, or from a final felony conviction in Texas state court, either capital or non-capital;
 - e. Prosecution or defense of an application for habeas corpus from a final felony conviction, either capital or non-capital, in United States District Court under 28 USC §2254, or 28 USC §2255;
 - f. Prosecution or defense of an appeal to a United States Circuit Court of Appeals from the judgment of a United States District Court in an action under 28 USC §2254 or 28 USC §2255; or
 - g. Prosecution or defense of any criminal law matter at the United States Supreme Court.
2. Applicable appellate courts include the:
 - a. United States Supreme Court;
 - b. United States Circuit Courts of Appeals;
 - c. Texas Supreme Court exercising jurisdiction over adjudications in a juvenile case;
 - d. Texas Court of Criminal Appeals;
 - e. Texas Courts of Appeals;
 - f. Texas District Courts exercising post-conviction habeas corpus jurisdiction under Article V §8, Texas Constitution, or Articles 11.07, 11.071 or 11.072, Code of Criminal Procedure;
 - g. United States District Courts exercising post-conviction habeas corpus jurisdiction under 28 USC §2254 or 28 USC §2255; and
 - h. Statutory Texas county courts sitting as Courts of Appeals in cases under Title II, Chapter 30, Government Code or exercising post-conviction habeas corpus jurisdiction under Article V §16, Texas Constitution, or Article 11.072, Code of Criminal procedure;

B. SUBSTANTIAL INVOLVEMENT. Applicant must show substantial involvement and special competence in criminal appellate law practice by providing such information as may be required by TBLS.

1. **Certification.**

a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 25% of his or her time practicing criminal appellate law during each year of the 3 years immediately preceding application as defined in Section XVIII, A of the Specific Area Requirements for Criminal Appellate Law.

b. **Task Requirements.** Applicant must provide information concerning specific tasks he or she has performed in criminal appellate law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) Applicant shall provide information regarding his or her participation in each of the following types of criminal appellate cases during his or her entire practice:

(a) Appeal or defense of a judgment or order in a criminal law matter, or juvenile adjudication, to a criminal appellate court;

(b) Preparation of, or responding to, a petition for discretionary review or related brief to the Texas Court of Criminal Appeals;

(c) Prosecution or defense of an application for an extraordinary matter, such as petition for writ of mandamus or application for original habeas corpus, to the Texas Court of Criminal Appeals, a Texas Court of Appeals, United States District Court, or United States Circuit Court of Appeals, in a criminal matter;

(d) Prosecution or defense of an application for post-conviction writ of habeas corpus from a misdemeanor conviction to a statutory county court exercising habeas corpus jurisdiction, or from a final felony conviction in Texas state court, either capital or non-capital;

(e) Prosecution or defense of an application for habeas corpus from a final felony conviction, either capital or non-capital, in United States District Court under 28 USC §2254, or 28 USC §2255;

(f) Prosecution or defense of an appeal to a United States Circuit Court of Appeals from the judgment of a United States District Court in an action under 28 USC §2254 or 28 USC §2255; and

(g) Prosecution or defense of any criminal law matter at the United States Supreme Court.

(2) *Anders* briefs shall not satisfy any task requirement.

- (3) Applicant, as lead appellate counsel, shall have performed a minimum of 50 tasks as defined in B, 1, b, (1) (a)–(g) of these during his or her entire practice. Of these 50 tasks, applicant shall have:
 - (a) handled at least 25 tasks within the 3 years immediately preceding application; and
 - (b) performed a minimum of 5 oral arguments at a Court of Appeals, the Texas Court of Criminal Appeals, a United States Circuit Court of Appeals, or the United States Supreme Court during his or her entire practice.
- (4) Service for an appellate court as a briefing attorney and/or staff attorney for at least 5 years may be considered by TBLS as the equivalent of the requirements set out in Section XVIII, B,1,b(1)(a-g) above. Service for less than 5 years may be considered proportionally.
- c. **Certification without Examination.** An applicant for certification, otherwise qualified, who: (i) has been licensed for 10 years, (ii) is currently certified by TBLS in Criminal Law, and (iii) satisfies the requirements of B, 1, b, (3) at the time application is made is eligible for certification in this specialty area without taking a written examination provided that the application is filed no later than 3 years after effective date of this specialty area.
2. **Recertification.** Applicant must have devoted a minimum of 25% of his or her time practicing criminal appellate law during each year of the 5 year period of certification as defined in Section XVIII, A of the Specific Area Requirements for Criminal Appellate Law except as provided for in Part I–General Requirements, Section VI, C,1(b).

C. REFERENCE REQUIREMENTS. Applicant must submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in criminal appellate law. These persons must be substantially involved in criminal appellate law, and be familiar with applicant’s criminal appellate law practice.

1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving criminal appellate law matters within the 3 years immediately preceding application.
2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving criminal appellate law matters since certification or the most recent recertification.
3. **Reference Types.** Applicant must submit the following types of references:
 - a. Four Texas attorneys who are substantially involved in criminal appellate law. Applicant must have tried a criminal appellate law matter with or against one of these attorneys.
 - b. One judge of any court of record in Texas whom applicant has appeared before as an advocate in a criminal appellate law matter.

**TEXAS PLAN FOR RECOGNITION AND REGULATION
OF
SPECIALIZATION IN THE LAW**

(As Amended ~~January 27, 2004~~ September, 2010)

**SECTION I
PURPOSE AND OBJECTIVE**

To promote the availability, accessibility and quality of the services of attorneys to the public in particular areas of the law is to serve the public interest and advance the standards of the legal profession. That is the purpose and objective of the following program for the recognition and regulation of those attorneys who have special competence in a particular area of the law.

**SECTION II
TEXAS BOARD OF LEGAL SPECIALIZATION**

The State Bar of Texas hereby establishes a Texas Board of Legal Specialization (hereinafter referred to as the "TBLS"). The TBLS shall be composed of twelve members appointed by the President of the State Bar of Texas, with the approval of its Board of Directors. The TBLS shall be representative of the legal profession in Texas and shall consist only of licensed attorneys, some of whom specialize and some of whom are in general practice. All members shall hold office for three years and until their successors are appointed. Members shall be appointed to three year staggered terms of office. Any vacancy shall be filled in the manner provided for original appointments. All members of the TBLS shall be eligible for reappointment but for no more than one additional term.

**SECTION III
JURISDICTION OF THE BOARD**

Subject to the continuing jurisdiction of the Supreme Court of Texas, the TBLS shall have general jurisdiction of all matters pertaining to specialization in the practice of law and shall have the authority and duty to:

- A. Administer the program for the recognition and regulation of specialization in the law.
- B. Upon appropriate petition, define and designate areas of law in which certificates of special competence may be granted and provide procedures by which such areas may be determined, redefined or eliminated.
- C. Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates of special competence to attorneys in defined and designated areas of law, after public hearings on due notice have been held.
- D. Provide procedures for the investigation and testing of the qualifications of applicants and certificate holders and to award certificates of special competence in a form approved by the TBLS.
- E. Make and publish reasonable and nondiscriminatory standards for continuing proficiency, recertification or renewal of certificates of special competence after public hearing on due notice.

- F. Encourage law schools, the State Bar Committee on Continuing Legal Education, local bar associations and other agencies of continuing legal education to develop and maintain a program of legal education and continuing legal education to meet the standards prescribed by the TBLS.
- G. Cooperate with other agencies of the State Bar of Texas in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of specialization in the law in the manner determined by the TBLS.
- H. Cooperate with the Standing Committee on Specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization.
- I. Make and publish standards, rules and regulations to implement this authority, all in accordance with the limitations on the power of the TBLS and the minimum standards prescribed by the TBLS.
- J. Establish and publish reasonable and non-discriminatory standards for accreditation of private certifying organizations which grant certification in a manner similar to that granted by the TBLS.

SECTION IV LIMITATIONS ON POWER OF THE TBLS

The following limitations on the power of the TBLS are established.

- A. No standards shall be approved which shall in any way limit the right of a certificate holder to practice law in all areas. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though he or she is board certified in a particular area of law.
- B. No attorney shall be required to be certified before he or she can practice law in any particular area of the law. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though he or she is not board certified in any particular area.
- C. All requirements for and all benefits to be derived from certification granted by the TBLS or from that by an organization approved by the TBLS are individual and may not be fulfilled by or attributed to a law firm of which the certified attorney may be a member.
- D. Participation in the Plan shall be on an entirely voluntary basis.
- E. The limit on the number of areas of law in which an attorney may be certified shall be determined by such practical limits as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the TBLS.
- F. No rules or standards shall be adopted in contravention of the rules of the State Bar of Texas.

SECTION V ADVISORY COMMISSIONS

Advisory Commissions to the TBLS shall be established for each area of law in which certificates of special competence are to be issued. These Commissions shall advise and assist the TBLS in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in law. Standards for the issuance of certificates of special competence shall be established by the TBLS, but it will be advised in this and other relevant matters by the Advisory Commission for each area of law. The Advisory Commission for each area of law shall be charged with actively administering the program in its particular area in cooperation with and under the general policy guidance of the TBLS.

Advisory Commission members shall be appointed by the TBLS in such number and for such terms as the TBLS shall direct.

SECTION VI MINIMUM STANDARDS FOR CERTIFICATION

The minimum standards for certification under this program are prescribed below. Each Advisory Commission may recommend, and the TBLS may establish, additional or higher standards. An attorney (1) who is an active member in good standing of the State Bar of Texas; (2) who currently maintains an office in the State of Texas; and (3) who meets the requirements prescribed by the TBLS, shall be granted a certificate in a form approved by the TBLS which shall certify, under the name of the, TBLS the attorney's special competence in a particular area of law designated by the TBLS as an area of law in which certificates of special competence may be granted.

- A. Requirements for qualifying for certification are:
1. A minimum of five (5) years of actual practice of the law on a full time basis.
 2. A satisfactory showing, as determined by the TBLS, after advice from the appropriate Advisory Commission, of a substantial involvement in the particular area of law for which certification is sought for such reasonable period of time immediately preceding certification as may be determined by the TBLS after advice from the Advisory Commission.
 3. A satisfactory showing, as determined by the TBLS, after advice from the appropriate Advisory Commission, of such educational experience in the particular area of law for which certification is sought as the TBLS deems advisable.
 4. Passing a written examination applied uniformly to all applicants before certification to demonstrate sufficient knowledge, proficiency and experience in the area of law for which certification is sought and in the various areas of law relating to such area as is necessary to justify the representation of special competence to the legal profession and to the public.
 5. Passing an oral examination, if determined to be advisable by the TBLS, with the advice of the appropriate Advisory Commission.
 6. Payment of any fee required by the TBLS.

"Substantial involvement", as used in these standards, shall be defined by the TBLS as to each particular area of law from a consideration of its complexity and distinction from other areas, and from consideration of the time and extent of necessary devotion to the particular area of practice.

SECTION VII STANDARDS FOR RECERTIFICATION

No certificate of special competence shall be issued or renewed for a period longer than five years, and the term of any certificate shall be stated on its face.

Each Advisory Commission may recommend, and the TBLS may establish additional requirements and safeguards to insure the continued proficiency of any holder of a certificate of special competence, but recertification shall be required at least every five years under the following minimum standards:

- A. A satisfactory showing, as determined by the TBLS, with the advice of the appropriate Advisory Commission, of a substantial involvement in the particular area of law for which certification was granted, during the period of certification;
- B. A satisfactory showing, as determined by the TBLS, after advice from the appropriate Advisory Commission, of such continuing educational experience in the area of law for which certification was granted, during the period of certification as the TBLS deems advisable; and
- C. The payment of any fee prescribed by the TBLS. In the event an attorney's previous certificate is not effective at the time application is made for recertification or he or she fails to meet the requirements for recertification, he or she shall be entitled to seek certification by examination as provided in Section VI above.

SECTION VIII REVOCATION OF CERTIFICATION

- A. A certificate of special competence issued by the TBLS may be revoked by the TBLS:
 - 1. If recognition of certification in that area is terminated; or
 - 2. If a determination is made that the certificate holder has not complied with applicable rules and regulations of the TBLS, is no longer a member in good standing of the State Bar of Texas, has made a false representation or misstatement of material fact to the TBLS, has engaged in professional misconduct or has engaged in other conduct which constitutes good cause for revocation as determined by the TBLS.
- B. A certificate of special competence shall be revoked automatically if a certificate holder is convicted of a serious crime, is disbarred or resigns from the practice of law.
- C. Upon notice of the determination of the TBLS that the certificate of special competence has been revoked; the certificate holder shall return the certificate of special competence to the TBLS.
- D. A certificate of accreditation issued to a private certifying organization by the TBLS may be revoked by the TBLS upon a determination that:
 - 1. The certifying organization has ceased to exist;
 - 2. The certifying organization no longer meets the TBLS standards; or
 - 3. The certifying organization has failed to abide by the Rules and Regulations of the TBLS.

Upon notice of the determination of the TBLS that the certificate has been revoked, the certificate holder shall return the certificate of special competence to the TBLS.

**SECTION IX
RIGHT OF APPEAL**

An attorney who is refused certification, recertification or whose certificate is revoked by the TBLS, or a private certifying organization which is denied accreditation by the TBLS, shall have the right to appeal the ruling of the TBLS to the Board of Directors of the State Bar of Texas under such rules and regulations as it may prescribe. The exhaustion of this right of appeal shall be a condition precedent to judicial review.

**SECTION X
RESPONSIBILITIES OF CERTIFIED ATTORNEYS**

- A. When a client is referred to an attorney who is certified by the TBLS on a matter within the attorney's specialty area, the attorney so certified shall not take advantage of his position to enlarge the scope of his representation. In addition to any requirements of the Texas Disciplinary Rules of Professional Conduct, the attorney so certified shall encourage a referred client to return to the referring attorney for the handling of future legal needs.
- B. Special Controls
1. Each applicant and certified attorney shall agree to abide by all rules and regulations promulgated by the TBLS as amended from time to time.
 2. Certification by the TBLS confers no vested rights or property rights.
- C. Rules of Professional Conduct
- Any attorney holding a current certificate of special competence shall be entitled to the following:
1. To state in recognized and conventional legal directories or law lists that the attorney is certified by the TBLS in a particular area in the following words: "Board Certified (e.g., Labor and Employment Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including Texas Disciplinary Rules of Professional Conduct;
 2. To state in a notice mailed to attorneys, clients, former clients, personal friends and relatives that the attorney is certified by the TBLS in a particular area in the following words: "Board Certified (e.g., Family Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including Texas Disciplinary Rules of Professional Conduct;
 3. To state in the classified section of telephone directories that the attorney is certified by the TBLS in a particular area in the following words: "Board Certified (e.g., Criminal Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Texas Disciplinary Rules of Professional Conduct;
 4. To state on a professional card that the attorney is certified by the TBLS in a particular area in the following words: "Board Certified (e.g., Civil Trial Law)—Texas Board of Legal Specialization". Said information is also permitted on the letterhead under the individual listing of the attorney on the margin of the stationary, but not under the styled name of the firm at the top of the letterhead. In all other respects the listing shall conform to the present rules of the State Bar of Texas, including Texas Disciplinary Rules of Professional Conduct; and

5. To display in the attorney's office the certificate issued by the TBLS.

No statement of certification shall be permitted other than as above specifically described unless permitted by the rules of the State Bar of Texas, including the Texas Disciplinary Rules of Professional Conduct.

SECTION XI FINANCING OF THE PROGRAM

A fee schedule shall be established by the TBLS for certification of attorneys and legal assistants and for accreditation of attorney certifying organizations.

SECTION XII RETAINED JURISDICTION OF SUPREME COURT

The jurisdiction of the TBLS shall be limited to ~~seventeen~~ eighteen areas of law: Criminal Law; Labor and Employment Law; Family Law; Estate Planning and Probate Law; Civil Trial Law; Personal Injury Trial Law; Immigration and Nationality Law; Real Estate Law; Tax Law; Bankruptcy Law; Oil, Gas and Mineral Law; Civil Appellate Law; Administrative Law; Consumer and Commercial Law, Juvenile Law, Health Law, ~~and~~ Workers' Compensation Law, and Criminal Appellate Law; and to the development and operation of the program in the recognition and regulation of specialization in the law, provided, however, that the number and type of areas included in the program and the jurisdiction of the TBLS may be enlarged, altered, or terminated from time to time by the Supreme Court of Texas.

SECTION XIII LEGAL ASSISTANT CERTIFICATION

The TBLS may administer a specialty certification program for legal assistants as described in the Texas Plan for Recognition and Regulations for Legal Assistant Certification.