

The Standards must be read in conjunction with the Rules Governing the State Bar of California Program for Certifying Legal Specialists that govern the Program Requirements.

PROPOSED AMENDMENTS

THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN ADMIRALTY AND MARITIME LAW

1.0 Definition

Admiralty and Maritime law is the practice of law dealing with substantive and procedural aspects of the law that governs vessels, navigation and shipping. It includes the statutes and regulations that govern the operation of vessels, piers, marinas, and the impact of pollution upon navigable waters and, under certain circumstances, may include these activities on the high seas. It also includes injury and other claims by maritime workers and passengers, debts and torts of vessels, marine insurance, vessel charters, marine casualties, salvage and wreck removal, marine pollution, carriage of goods and cargo damage or loss, piracy, pilotage and towage.

2.0 Task Requirements For Certification

An applicant must demonstrate that, within five years immediately preceding the initial application, he or she has been substantially involved in the practice of admiralty and maritime law. With respect to each task, the applicant must have performed the task personally, or had direct and primary responsibility for its performance under his or her close and ongoing supervision. For purposes of this showing, points may be accumulated from any of the tasks, subject to the maximum specified per task. However, each task may only be counted once. The term “dispositive hearing” as used hereinafter means determinative of one or more of the issues identified in one or more task requirements, with a minimum of 100 points in 2.1.

An applicant must submit a total of 300 points that must be accumulated during the five years immediately preceding the initial application and:

- 2.1 Serve as principal attorney in a potentially dispositive hearing, arbitration or a trial that determines:
 - 2.1.1 Admiralty jurisdiction, including but not limited to: (1) the basis of admiralty jurisdiction; (2) the consequences of admiralty jurisdiction; (3) the doctrine of exclusive admiralty jurisdiction; (4) the operation of the savings to suitors clause; (5) an action involving the operation of the Admiralty Extension Act; and/or (6) the basis for supplemental jurisdiction over non-maritime claims. 10 points per matter. Maximum number of points in this category: 50 points.
 - 2.1.2 Proper venue, including but not limited to: (1) proper venue in an *in rem* or *quasi in rem* action; (2) venue pursuant to 28 USC Section 1391; (3) proper venue in action for maritime personal injury, including but not limited to an action against a Jones Act employer, a shipowner or a passenger carrier; (4) the factors justifying the transfer of venue pursuant to 28 USC Sec. 1404; (5) removal of a maritime cause of action from state to federal court; and/or (6) proper venue under the Suits in Admiralty

- Act, the Public Vessels Act or a Limitation Action. 10 points per matter. Maximum number of points in this category: 50 points.
- 2.1.3 Choice of law, including but not limited to: (1) the operation of a choice of law clause in a maritime contract governing actions in either contract or tort or both; (2) application of the *Lauritzen/Rhoditis* factors; (3) the effect of a bankruptcy court automatic stay upon an *in rem* proceeding; (4) the creation of a maritime lien upon a vessel operated by an owner undergoing Ch.11 bankruptcy reorganization; and/or (5) role of state law in a maritime law action. 10 points per matter. Maximum number of points in this category: 50 points.
- 2.1.4 Choice of forum or *forum non-conveniens* issues in an interstate or international contract. 10 points per matter. Maximum number of points in this category: 30 points.
- 2.1.5 Legal liability for the loss of or damage to cargo transported under an ocean bill of lading. 25 points per matter. Maximum number of points in this category: 75 points.
- 2.1.6 Liability and or damages in a maritime personal injury or wrongful death claim. 40 points per matter. Maximum number of points in this category: 120 points.
- 2.1.7 Liability and other maritime tort claims, including collision, allision or pollution claims, and/or marine products liability. 40 points per matter. Maximum number of points in this category: 120 points
- 2.1.8 An arrest of a vessel to the conclusion of the action. 30 points per matter. Maximum number of points in this category: 90 points.
- 2.1.9 A Motion for Interlocutory Sale of a vessel. 5 points per matter. Maximum number of points in this category: 20 points.
- 2.1.10 The ranking or validity of two or more competing maritime liens. 30 points per matter. Maximum number of points in this category: 90 points.
- 2.1.11 A claim for a maritime lien under the California Harbors and Navigation Code's "Boaters Lien Law" through to the conclusion of the action. 30 points per matter. Maximum number of points in this category: 90 points.
- 2.1.12 The rights of either a claimant or employer in an LHWCA proceeding before an Administrative Law Judge through to a final award. 30 points per matter. Maximum number of points: 150 points.
- 2.1.13 A wrongful arrest action through to the conclusion of the action. 30 points per matter. Maximum number of points in this category: 90 points.
- 2.2 Preparing and drafting a brief, contract, pleading or other legal document or report as follows:
- 2.2.1. Drafting a motion where any one of the following is determined: (a) the right of a shipowner to limit its liability; (b) the ability of party to qualify as

a “shipowner” entitled to limit its liability; (c) the impact of the Flotilla Rule upon the limitation fund or limitation amount; (d) the valuation of the fund or limitation amount. 15 points per matter. Maximum number of points in this category: 45 points.

- 2.2.2 Authoring the brief(s) filed in a dispositive hearing or trial in state or federal district court where one or more issues of substantive admiralty and maritime law is decided. 30 points per matter. Maximum number of points in this category: 90 points.
- 2.2.3 Providing substantive written legal advice or analysis to a client, claimant, or other interested party regarding the existence, validity or ranking of maritime liens. 5 points per matter. Maximum number of points in this category: 45 points.
- 2.2.4 Providing substantive written legal advice or analysis to a client, claimant or other interested party evaluating the merits or value of a maritime personal injury or wrongful death claim or a defense thereto. 5 points per matter. Maximum number of points in this category: 30 points.
- 2.2.5 Acting as the attorney primarily responsible for preparing and filing a complaint asserting a claim for maritime personal injury. 30 points per matter. Maximum number of points in this category: 30 points.
- 2.2.6 Preparing a letter of undertaking or other form of security to avert an arrest or effectuate the release of a vessel under arrest. 5 points per matter. Maximum number of points in this category: 20 points.
- 2.2.7 Preparing and filing: (a) A petition for Limitation of Liability under the Limitation of Ship Owners’ Liability Act. 15 points per matter. (b) An Answer and Claim in a limitation of liability action. 5 points per matter. Maximum number of points in this category: 35 points.
- 2.2.8 Preparing a maritime contract, including but not limited to: (a) a ticket contract or other contract for passage; (b) a bill of lading or other contract of carriage; (c) a towage contract; (d) a salvage contract; (e) a contract of marine insurance; (f) a first preferred ship’s mortgage; (g) a wharfage contract; (h) a ship repair or boat yard work order contract; or (i) maritime terminal facilities, stevedoring, or terminal service agreements. 15 points per contract. Maximum number of points: 90 points.
- 2.2.9 Providing substantive written legal advice or analysis to a client, claimant, or other interested party regarding the existence, scope, limitations and/or defenses to coverage under a marine insurance policy. 10 points per matter. Maximum number of points in this category: 50 points.
- 2.2.10 Providing substantive written legal advice or analysis to a client, claimant, or other interested party regarding the existence, value, merits and/or defenses to a salvage claim. 5 points per matter. Maximum number of points in this category: 30 points.
- 2.2.11 Providing substantive written legal advice or analysis to a client, claimant, or other interested party in connection with a claim for the collection of

freight and/or the enforcement of a lien for unpaid freight. 5 points per matter. Maximum number of points in this category: 30 points.

2.2.12 Providing substantive written legal advice or analysis to a client, claimant, or other interested party regarding the merits and/or defenses to a claim for unpaid wages, unearned wages, penalty wages, or maintenance and cure. 5 points per matter. Maximum number of points in this category: 30 points.

2.3 Acting as principal attorney in any of the following vessel transactions:

2.3.1 Representing a shipowner or charterer in negotiation and drafting a charter party through its execution. 15 points per matter. Maximum number of points in this category: 45

2.3.2 Hiring of crew, provisioning the vessel, or tendering the vessel pursuant to a charter party. 5 points per matter. Maximum number of points in this category: 25 points.

2.3.3 Representing an owner in obtaining the documentation of a U.S. flagged vessel or continuing its documentation following rebuild. 20 points per matter. Maximum number of points in this category: 60 points.

2.3.4 Representing a seller or purchaser in a vessel construction and/or sale transaction through to the conclusion of the construction and sale and the finalization of the vessel sale contract. 15 points per matter. Maximum number of points in this category: 30 points.

2.4 Other eligible tasks and experience:

2.4.1 Testifying as an expert witness in an action in a foreign forum where the topic on which you have been retained to testify and/or consult is a matter of substantive U.S. admiralty or maritime law, or a federal or state forum where the topic on which you have been retained to testify and/or consult is the standard of care/custom of practice in handling an admiralty and maritime law matter. 20 points per matter. Maximum number of points in this category: 80.

2.4.2 Acting as a judge, arbitrator, special master or mediator in any litigation or formal mediation where matters of admiralty or maritime law are among the primary contested issues. 30 points per separate judicial or arbitration proceeding which proceeded to a final decision. 15 points per mediation. Maximum number of points in this category: 90.

2.4.3 Acting as the principal attorney in preparing a mediation brief and representing a client at mediation. 10 points per matter. Maximum number of points in this category: 50.

2.4.4 In a matter before an administrative agency/entity in connection with: (a) the operation of vessels or watercraft; (b) licensing of maritime personnel; (c) issuance of ocean bills of lading or publication of tariffs; (d) filing a report of maritime casualty or in connection with a U.S. Coast Guard maritime casualty investigation; (e) a U.S. Coast Guard administrative

proceeding; (f) the operation of a pier or marine terminal; (g) licensing of non-vessel operating common carrier or freight forwarder. 20 points per matter. Maximum number of points in this category: 120 points.

- 2.4.5 Industry experience, such as having been licensed as a mariner or attendance at a maritime academy, will be considered on a case-by-case basis. Maximum number of points in this category: 50 points.

3.0 Educational Requirement for Certification

An applicant must show that, within the three years immediately preceding the application for certification, he or she has completed not less than 45 hours of educational activities specifically approved for Admiralty and Maritime law, or has received, within the five years immediately preceding application, an LL.M degree in maritime law from a law school accredited by the American Bar Association or a degree determined to be equivalent by the Advisory Commission.

4.0 Alternative to Written Exam Requirement

As an alternative equivalent to the requirement of passing a written examination, an applicant may demonstrate the requisite knowledge of admiralty and maritime law by fulfilling the following requirements within five years immediately preceding submission of the application for certification:

- 4.1 Accumulating not less than 450 points by completing tasks identified in the Task Requirements for Certification; or
- 4.2 Accumulating not less than 400 points by completing tasks identified in the Task Requirements for Certification and accomplishing one or more of items 4.2.1 – 4.2.6.

Note: Program Rule 6.2 states that not more than one-half (1/2) of the applicant's education requirement for certification or recertification can be satisfied by designated alternative methods. The following activities cannot be used to satisfy both the education requirement under the alternative and the alternative to the exam requirement.

- 4.2.1 Authoring at least two articles, each not less than 2,500 words in length (approximately 10 pages based on 250 words per page and 25 lines per page in Courier New 12 pt.) concerning or pertaining to a maritime legal issue, which is published in a journal, law review, maritime trade publication or similar periodical with a claimed circulation of at least 250 recipients per issue. All articles must be submitted for review, to confirm each article relates substantially and primarily to maritime (or admiralty) law issues, and to assure compliance with the above requirements; or
- 4.2.2 Authoring or co-authoring a chapter in a treatise or similar book, which is not less than 2,500 words in length, concerning or pertaining to one or more matters relating to maritime/admiralty law. All books or chapters must be submitted for review, to confirm they relate substantially and primarily to maritime (or admiralty) law issues, and to assure compliance with the above requirements; or
- 4.2.3 Presentation on at least two occasions (for a total of not less than four hours of approved continuing legal education) on topics substantially

related to admiralty and maritime law matters or issues, or presentation on at least two occasion (for a total of not less than eight hours of presentation) before maritime industry or trade organizations, on topics substantially involving maritime or admiralty law principles which potentially impact such industry or trade organizations' members; or

4.2.4 Teaching a two or three unit class on or substantively related to admiralty and maritime law, or a related topic, at least twice at an accredited institution of higher education. Credit for teaching may be used either for purposes of satisfying these alternative to written exam requirements or for purposes of satisfying continuing legal education requirements, but not for both purposes; or

4.2.5 Devoting not less than 25 hours in connection with: (a) preparing for and providing testimony before any committee or sub-committee of the Congress or any other legislative body regarding or concerning admiralty and/or maritime law, or (b) drafting or contributing to the drafting of legislation concerning admiralty and/or maritime law matter, or (c) providing professional services in the capacity of an expert concerning admiralty and/or maritime law matters. Credit for such expert services may be used either for purposes of satisfying these alternative to written exam requirements or for purposes of satisfying continuing legal education requirements, but not for both purposes; or

4.2.6 Serving as an Editor or in a similar position for American Maritime Cases, devoting at least 25 hours in connection with such position.

54.0 Task Requirement for Recertification

An applicant for recertification must show that, during the current five-year certification period, he or she has had direct and substantial participation in the practice of admiralty and maritime law. Such showing must be made by compliance with the requirements set forth in section 2.0 or, at the discretion of the Commission, by sworn statement that the applicant has engaged in the practice of admiralty and maritime law substantially to the same extent as described in the application for original certification.

65.0 Educational Requirement for Recertification

An applicant for recertification must show that, during the current five-year certification period, he or she has completed not less than 60 hours of education activities specifically approved for admiralty and maritime law specialists, or by receiving, within the five years immediately preceding application, an LL.M degree in maritime law from a law school accredited by the American Bar Association or a degree determined to be equivalent by the Advisory Commission.