

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

THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN FRANCHISE AND DISTRIBUTION LAW

1.0 Definition

Franchise and distribution law encompasses matters involving franchise or other distribution relationships, and includes but is not limited to matters involving the California Franchise Investment Law, the California Franchise Relations Act, the Seller Assisted Marketing Plan Act, the FTC Rule and other similar types of federal, state or foreign laws, including industry-specific laws.

1.1 Certain Other Definitions

1.1.1 All references to any person include, but are not limited to, any affiliate controlled by, controlling or under common control with such person.

1.1.2 "Business opportunities" and "seller assisted marketing plans" shall have the same meanings as provided in the federal, state or foreign laws applicable to the transaction, matter or litigation.

1.1.3 "Distribution" means the sale of or offer to sell goods or services pursuant to a contract between persons operating at different levels of the production or distribution chain, including a license of the right to produce goods or services and to sell or offer to sell such goods or services.

1.1.4 "Distribution agreement" means a contract between a supplier and a distributor for the sale of or offer to sell goods or services, including but not limited to a license granted by a supplier to a distributor of the right to produce goods or services and to sell or offer to sell such goods or services.

1.1.5 "Distributor" means any person who, pursuant to a contract with a supplier, sells or offers to sell goods or services directly or indirectly to the end user, including but not limited to the licensee of the right to produce goods or services and to sell or offer to sell such goods or services.

1.1.6 "Franchise" shall have the same meaning as provided in the federal, state or foreign laws applicable to the transaction, matter or litigation; and for these purposes shall also be deemed to include business opportunities and seller assisted marketing plans.

1.1.7 "Franchisor" and "franchisee" shall have the same meanings as provided in the federal, state or foreign laws applicable to the transaction, matter or litigation; and for these purposes shall also be deemed to include sellers and buyers of business opportunities or seller assisted marketing plans.

1.1.8 "Franchise agreement" means a contract between a franchisor and a franchisee granting a franchise and governing the franchise relationship.

1.1.9 "Litigation" means any case or controversy before a court or in binding arbitration, where the amount in controversy exceeds the then current minimum amount for federal diversity jurisdiction; or formal adversarial proceedings before any governmental regulatory agency or bureau or tribunal, without reference to any monetary limitation.

1.1.10 "Supplier" means any person who sells or offers to sell goods or services to one or more distributors, including the licensor of the right to produce goods or services and to sell or offer to sell such goods or services.

2.0 Task Requirement for Certification

An applicant must demonstrate that, within the five years immediately preceding the initial submission of the written application, he or she has been substantially involved in the practice of franchise and distribution law. A prima facie showing of substantial involvement in the practice of franchise and distribution law is made by the performance of the following tasks within the five-year period so as to accumulate 100 points. 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 maximums specified per task. However, each task may only be counted once.

2.1 Representing the franchisor in the structuring of a franchise program, including the drafting of the franchise agreement and related documentation (including any disclosure documents required by law): 5 points per franchise program. Maximum number of points in this category: 35 points.

2.2 Representing the supplier in the structuring of a distribution program other than a franchise program, including the drafting of the distribution agreement and related documentation: 5 points per distribution program. Maximum number of points in this category: 35 points.

2.3 Preparing and filing of (i) regulatory applications for initial registration, or (ii) substantive applications for renewal, or (iii) substantive post-effective amendments of a franchise program. Individual applications and applications for coordinated review may be used to satisfy this requirement. 5 points per separate program. Maximum number of points in this category: 35 points.

2.4 Representing a current or prospective franchisee or franchisor in connection with the acquisition or transfer of a new or existing franchise. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.5 Representing a current or prospective distributor in connection with the acquisition or transfer of a new or existing distribution agreement. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.6 Representing the seller or purchaser, with respect to the franchise or distribution law issues, in a merger or acquisition involving a franchise or distribution program consisting of at least ten (10) franchisees or distributors, in a single or related series of transactions. 5 points per each separate acquisition. Maximum number of points in this category: 35 points.

2.7 Providing substantive written legal advice or analysis regarding the application or non-application of the franchise or distribution laws in the United States in connection with a commercial relationship. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.8 Providing substantive written legal advice or analysis regarding the applicable franchise or distribution laws in connection with a cross-border franchise or distribution matter or transaction which is inbound to or outbound from the United States. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.9 Providing substantive written legal advice or analysis regarding the cancellation, termination or non-renewal of a franchise or distribution agreement. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.10 Providing substantive written legal advice or analysis to associations of franchisees or distributors, or assisting in negotiations on behalf of any associations of franchisees or distributors, in connection with franchise or distribution law matters. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.11 Providing substantive written legal advice or analysis involving antitrust or unfair competition law issues relating to franchise or distribution relationships. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.12 Providing substantive written legal advice or analysis involving advertising or consumer protection law issues relating to franchise or distribution relationships. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

2.13 Representing a party in litigation as its principal attorney where matters of franchise or distribution law are among the main contested issues. 5 points per separate litigation case if at least 250 hours are billed by the attorney on the case; 10 points per separate litigation case if at least 500 hours are billed by the attorney on the case; or 15 points per separate litigation case if at least 750 hours are billed by the attorney on the case. Maximum number of points in this category: 60 points.

2.14 Preparing or opposing a motion for summary judgment or other dispositive motion in litigation where matters of franchise or distribution law are among the main contested issues. 5 points per separate litigation case. Maximum number of points in this category: 35 points.

2.15 Preparing briefs in litigation on appeal to any appellate court where: (i) the attorney is the principal attorney responsible for authoring the brief(s); and (ii) matters of franchise or distribution law are among the main issues on appeal. 5 points per separate litigation case. Maximum number of points in this category: 35 points.

2.16 Conducting the principal oral argument before any appellate court for litigation on appeal where matters of franchise or distribution law are among the main issues in the oral argument. 5 points per separate litigation case. Maximum number of points in this category: 35 points.

2.17 Acting as the principal attorney in devising and implementing the litigation strategy in connection with pending or threatened litigation where matters of franchise or distribution law are expected to be among the main contested issues. 5 points per separate litigation case. Maximum number of points in this category: 35 points.

2.18 Representing a party in a formal mediation as its principal attorney where matters of franchise or distribution law are among the main contested issues. 5 points per separate formal mediation case. Maximum number of points in this category: 35 points.

2.19 Acting as the principal attorney in devising and implementing a formal compliance program for a client following the entry of a court order or other binding order or award against the client in any litigation where matters of franchise or distribution laws are among the main issues. 5 points per separate litigation case. Maximum number of points in this category: 35 points.

2.20 Acting as an expert witness or legal consultant in litigation where matters of franchise or distribution law are among the main contested issues. 5 points per separate litigation case. Maximum number of points in this category: 35 points.

2.21 Acting as a judge, arbitrator or mediator in any litigation or formal mediation where matters of franchise or distribution law are among the main contested issues. 5 points per separate litigation or mediation case. Maximum number of points in this category: 35 points.

2.22 Providing substantive written legal advice or analysis regarding other material issues concerning a franchise or distribution relationship not otherwise covered above. 5 points per matter or transaction. Maximum number of points in this category: 35 points.

3.0 Education Requirement for Certification

An applicant shall demonstrate that, within the three years immediately preceding application, the applicant completed at least 45 hours of education activities specifically approved for franchise and distribution law.

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 franchise and distribution law by fulfilling the following requirements within five years immediately preceding submission of the application for certification:

4.1 250% of the minimum practice requirement as set forth in section 2.0 (i.e., 200 points); or

4.2 150% of the minimum practice requirement as set forth in section 2.0 (i.e., 150 points); and

4.2.1 author of at least two published articles, or a contributing author or editor of at least one practice book (or chapter in such book) in the area of franchising or distribution law; or

4.2.2 presenter of at least eight hours of approved continuing legal education in at least two different programs in the area of franchising or distribution law; or

4.2.3 direct and substantial involvement (i) as a member of the Franchise and Distribution Law Consulting Group appointed by the Board of Governors in connection with the establishment of the specialty, including participation by the applicant in the preparation of the Standards for Certification and Recertification for the specialty; or (ii) in the development and preparation of the initial written examination for the specialty, such that the applicant would not be permitted to take the examination under the rules of the Legal Specialization program.

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 franchise and distribution law. Such showing will 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 franchise and distribution law substantially to the same extent as described in the application for original certification.

65.0 Education Requirement for Recertification

An applicant for recertification must show that, during the current five-year certification period, he or she has completed at least 60 hours of education activities specifically approved for franchise and distribution law.