

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.

## 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. ~~45~~ 25 number of points per matter. Maximum number of points in this category: ~~45~~ 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.~~78~~ 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.~~89~~ A Motion for Interlocutory Sale of a vessel. 5 points per matter. Maximum number of points in this category: 20 points.
- 2.1.~~910~~ 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.~~101~~ 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 number of points per matter. Maximum number of points in this category: 90 points.
- ~~2.1.11~~ The rights of either a claimant or employer before the U.S. Department of Labor in a proceeding before an Administrative Law Judge through to a final award. 30 points per matter. Maximum number of points: 150

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, ~~report~~, 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.

2.4.34 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 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.

## **5.0 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.