

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 LEGAL MALPRACTICE LAW

(effective November 21, 2008)

### 1.0 DEFINITION

Legal malpractice is the practice of law dealing with the prosecution or defense of claims against an attorney regarding wrongful acts or omissions arising out of the performance of the attorney's professional services, and/or issues of attorneys' fees, payments or liens. It does not include the prosecution or defense of attorney disciplinary matters.

#### 1.1 Certain Other Definitions

1.1.1 "Principal counsel" is the attorney who handles the proceedings in litigation during the entire proceeding or a substantial part thereof or the attorney who spends a majority of time on a matter in review, preparations and representing a client. There can only be one principal counsel per matter.

1.1.2 "Trial" or "arbitration" is a matter that takes a minimum of five days' time to verdict, judgment, or award.

### 2.0 TASK REQUIREMENT FOR CERTIFICATION

An applicant must demonstrate that, within five years immediately preceding submission of the written application, he or she has been substantially involved in the practice of legal malpractice law. A prima facie showing of substantial involvement in the area of legal malpractice law is made by the performance of the following tasks within the five-year period so as to accumulate 275 points. Up to 80 points of the trials or arbitrations mentioned in section 2.3 below may be accumulated for trials or arbitrations that do not involve legal malpractice and/or are prior to the five-year period. 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. Each task may be counted only once, but cases may be used for more than one task.

2.1 Acting as the principal counsel in devising, implementing or evaluating the advisability or the strategy of litigation and related issues, such as the existence of an attorney-client relationship and the unauthorized practice of law, in connection with pending or threatened litigation where matters of malpractice law are the main contested issue: 10 points per separate litigation case. Maximum number of points in this category: 60 points.

2.2 Representing a claimant or attorney in litigation as its principal counsel where matters of malpractice law are the main contested issue: 10 points per separate litigation case. Maximum number of points in this category: 60 points.

2.3 Acting as principal counsel in the trial, jury or non-jury, or binding arbitration of an action for legal malpractice or action on attorney's fees tried to conclusion to a jury, judge,

or arbitrator: 30 points per separate jury trial and 20 points per separate court trial or binding arbitration. Maximum number of points in this category: 120 points. Up to 80 points may be accumulated for trials or arbitrations that do not involve legal malpractice and/or are prior to the five-year period.

2.4 Preparing or opposing a demurrer, a motion for summary judgment, or other dispositive motion in litigation where matters of legal malpractice law are the main contested issue: 10 points per separate litigation case. Maximum number of points in this category: 60 points.

2.5 Preparing briefs in litigation matters before a court or arbitral forum: 10 points per litigation matter. Maximum number of points in this category: 40 points.

2.6 Representing a party in a formal mediation before a neutral party as its principal counsel where matters of legal malpractice are the main contested issue: 10 points per separate formal mediation. Maximum number of points in this category: 60 points.

2.7 Acting as an expert witness or legal consultant in litigation where matters of legal malpractice are among the main contested issues: 10 points per separate litigation case. Maximum number of points in this category: 40 points.

2.8 Acting as an arbitrator or mediator in any litigation or formal mediation where matters of malpractice law are among the main contested issues: 10 points per separate litigation or mediation case. Maximum number of points in this category: 40 points.

2.9 Representing a claimant or attorney in a legal malpractice matter in bringing or defending an anti-SLAAP motion: 10 points per matter. Maximum number of points in this category: 40 points.

2.10 Representing a claimant or attorney in a legal malpractice matter where there is an underlying coverage issue or reservation of rights letter: 5 points per separate litigation case. Maximum number of points in this category: 20 points.

2.11 Providing substantive written legal advice or analysis regarding conflicts of interest issues: 10 points per separate matter or transaction. Maximum number of points in this category: 40 points.

2.12 Providing substantive written legal advice or analysis regarding issues related to fees for legal services rendered by an attorney, including collectability, unconscionability under the Rules of Professional Conduct, reasonableness under Business & Professions Code §§6147-6148, and issues of quantum meruit: 10 points per separate matter. Maximum number of points in this category: 40 points.

2.13 Providing substantive written legal advice or analysis regarding a statute of limitations issue for legal malpractice: 5 points per matter or transaction. Maximum number of points in this category: 20 points.

2.14 Participation in a Bench Bar panel in which there is a fee dispute over the attorney's legal services: 10 points per separate matter. Maximum number of points in this category: 40 points.

2.15 Providing substantive written legal advice or analysis regarding an attorney's errors and omissions insurance policy, including insurance coverage policy limits, reservations of rights, and/or coverage exclusion issues: 5 points per separate matter. Maximum number of points in this category: 20 points.

2.16 Providing substantive written legal advice or analysis regarding other material issues concerning legal malpractice law not otherwise covered above: 5 points per separate matter or transaction. Maximum number of points in this category: 20 points.

### **3.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION**

An applicant shall demonstrate that, within the three years immediately preceding submission of the written application, the applicant completed at least 45 hours of education activities specifically approved for, or relevant to, legal malpractice 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 legal malpractice law by fulfilling the following requirements within five years immediately preceding submission of the application for certification:

4.1 Accumulate a minimum of 450 points under section 2.0; or

4.2 Accumulate a minimum of 360 points under section 2.0; and

4.2.1 be an author of at least two published articles, or a contributing authority or editor of at least one practice book (or chapter in such book), in the area of legal malpractice law; or

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

4.2.3 have been directly and substantially involved (i) as a member of the Legal Malpractice 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.

### **5.0 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 legal malpractice law. Such showing shall 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 legal malpractice law substantially to the same extent as described in the application for original certification.

### **6.0 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 educational activities specifically approved for, or relevant to, legal malpractice law.