

THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN APPELLATE LAW

(last revised effective 7/24/04)

1.0 DEFINITION

Appellate law is the practice of law dealing with procedural and substantive aspects of matters before state and federal appellate courts. "State and federal appellate courts" are: The United States Supreme Court, the California Supreme Court, the Federal Courts of Appeal, the California Court of Appeal or comparable appellate court.

2.0 TASK REQUIREMENT 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 appellate law. Substantial involvement includes, but is not limited to, advising clients with regards to appeals, identifying appealable orders, designating, reviewing and evaluating the record, preparing briefs, appellate motions, petitions for extraordinary writ, petitions for review, habeas corpus petitions and presenting oral arguments. With respect to each task, the applicant must have performed the task personally.

2.1 An applicant must submit a total of 125 points, at least 75 of which must be accumulated during the five years immediately preceding the initial application.

2.1.1 **Briefing** -- Each attorney who is substantially involved in a matter in an appellate court and has substantial responsibility for most or all of the following activities can claim credit: reviewing the record; researching the law; analyzing the issues; writing a procedural history, a statement of facts, and writing legal arguments.

2.1.1.1 ~~Attorneys responsible for h~~Handling an appeal or cross-appeal on behalf of an appellant, which must include preparing ~~the opening brief~~ -- 5 points. No more than three briefs under People v. Wende (1979) 25 Cal.3d 436 or Anders v. California (1976) 386 U.S. 738; 18 L.Ed.2d 493; 87 S.Ct. 1396 may be used in this category.

2.1.1.2 ~~Attorneys responsible for h~~Handling ~~appeals~~ an appeal or cross-appeal on behalf of a respondent or cross-respondent, which must include preparing ~~the~~ respondent=s brief -- 4 points.

2.1.1.3 ~~Attorneys responsible for h~~Handling a petition for extraordinary writ or a petition for writ of habeas corpus filed in an appellate court -- 3 points. If heard on the merits after issuance of an order to show cause or an alternative writ -- an additional 2 points.

2.1.1.4 ~~Attorneys responsible for p~~Preparing preliminary opposition to petition for writ -- 1 point. If court issues alternative writ or order to show cause requiring answer and additional briefing -- an additional 3 points.

2.1.1.5 ~~Attorneys responsible for s~~Supervisory handling of an appeal or writ -- 3 points. This requires supervision over issue selection, strategy decisions, organization and revision of drafts. Only one attorney may claim supervisory credit for each appeal or writ.

2.1.1.6 ~~Attorneys responsible for h~~Handling a matter in the California Supreme Court or the United States Supreme Court.

~~2.1.1.6.1 Responsible for p~~Preparing a petition for review or certiorari -- 2 points. If the attorney's initial substantial involvement in the appeal occurred after decision in the Court of Appeal -- an additional 2 points.

~~2.1.1.6.2 Preparing an A~~nswer to petition for review or certiorari -- 1 point. If the attorney's initial substantial involvement in the appeal occurred after ~~review or cert was granted~~ decision in the Court of Appeal -- an additional 2 points.

~~2.1.1.6.3 Review or certiorari granted and attorney responsible for P~~preparing briefs on the merits ~~after review or certiorari granted~~ -- ~~3 additional~~ 5 points. If the attorney's initial involvement in the appeal occurred after decision in the Court of Appeal -- ~~an additional 2 points.~~

~~2.1.1.6.4 Attorneys responsible for p~~Preparing opposing brief on the merits in the California Supreme Court or the United States Supreme Court -- ~~3~~ 4 points. If the attorney's initial substantial involvement in the appeal occurred after review or cert was granted -- an additional 2 points.

2.1.1.7 ~~Attorneys responsible for p~~Preparing substantive amicus curiae brief -- 2 points. Reply to amicus curiae brief -- 1 additional point. If the attorney's initial substantial involvement in the appeal occurred after decision in the Court of Appeal -- 1 additional point.

2.1.2 Conducted or participated in a court supervised appellate settlement conference on an appeal -- 1 point.

2.1.3 Oral argument in the California Supreme Court or the U.S. Supreme Court -- 2 points. If the attorney's initial substantial involvement in the appeal occurred after the decision in the Court of Appeal -- 2 additional points.

2.1.4 Judicial Service/Research Attorney

2.1.4.1 If the applicant was previously employed as an appellate justice in any of the courts listed in section 1.0, 40 points per year shall be awarded for each year of service.

2.1.4.2 If the applicant has been employed as a research attorney or judicial law clerk in any of the courts listed in section 1.0, 25 points per year shall be awarded for each year of service up to a three (3) year maximum.

2.2 **Oral Argument** -- Attorney must have presented seven oral arguments, during a career, in any of the courts listed in section 1.0.

2.2.1 Oral argument must involve some discussion of the case other than a mere inquiry as to whether the court has questions.

2.2.2 Service of at least one full year as an appellate justice may be substituted for this requirement.

2.3 Alternative or additional forms of appellate practice may be called to the attention of the Advisory Commission for consideration in fulfilling the requirements of substantial involvement.

3.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION

An applicant must show that, within the three years immediately preceding application, he or she has completed not less than 45 hours of approved educational activities as follows:

3.1 Not less than 20 of the required hours must be in appeals and writs;

3.2 The remaining hours may be in any combination of pre-trial, trial, or post-trial practice and procedure, or substantive law topics.

For purposes of this section, approved educational activities may include educational activities approved for either MCLE or legal specialist credit.

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 appellate law. ~~Such~~ That showing shall be made by compliance with the requirements as set forth in sections 2.1 and 2.3 by accumulating at least 63 points during the current certification period. At the discretion of the Commission, the task requirement may be deemed fulfilled by ~~sworn statement~~ a showing that the applicant has engaged in the practice of appellate 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 approved educational activities as follows:

5.1 Not less than 25 of the required hours must be in appeals and writs;

5.2 The remaining hours may be in any combination of pre-trial, trial, or post-trial practice and procedure, or substantive law topics.

For purposes of this section, approved educational activities may include educational activities approved for either MCLE or legal specialist credit.