

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 CRIMINAL LAW

(revised effective 1/1/03)

(Amended by the Board of Governors May 16, 2008.)

1.0 DEFINITION

Criminal law encompasses the prosecution or defense of persons accused of crimes in state or federal court, and minors subject to wardship proceedings in juvenile court based on allegations of their criminal misconduct. The field includes both trial and appellate advocacy, in addition to such ancillary proceedings as criminal and civil forfeitures.

2.0 TASK REQUIREMENT FOR CERTIFICATION

An applicant must demonstrate that, within the five ~~(5)~~ years immediately preceding ~~the initial~~ submission of the written application, he or she has been substantially involved in the practice of criminal law, which shall include the showing that he or she has been principal counsel of record in criminal proceedings as follows:

- 2.1 Five ~~(5)~~ jury trials in California, or in any United States District Court, in cases submitted to the jury for decision, wherein the offenses charged were felonies;
- 2.2 Five ~~(5)~~ additional jury trials in any jurisdiction in cases submitted to the jury for decision, regardless of the nature of the offenses;
- 2.3 Forty ~~(40)~~ additional criminal matters, which may include juvenile court proceedings relating to allegations of criminal misconduct, to disposition in a Municipal or Superior Court within the State of California or a United States District Court or Federal Magistrate Court;
- 2.4 Any two ~~(2)~~ of the following
 - 2.4.1 Five ~~(5)~~ hearings, pursuant to section 1538.5 of the Penal Code or any other motion to suppress evidence, in which oral testimony was taken and in which decisions have been rendered, and three ~~(3)~~ petitions or answers filed in extraordinary writ proceedings in the following courts: United States Supreme Court, United States Court of Appeals, United States District Court, California Supreme Court, California Court of Appeal, California Superior Court;
 - 2.4.2 Three ~~(3)~~ appeals in the following courts in which briefs were filed by the applicant in the following courts: United States Supreme Court, United States Court of Appeals, United States District Court, California Supreme Court, California Court of Appeal, California Superior Court; or
 - 2.4.3 Five ~~(5)~~ additional jury trials submitted to the jury for decision, regardless of the nature of the offense.

Principal counsel is the attorney who presents criminal proceedings to the court or jury during the entire proceeding or a substantial part thereof. More than one attorney may be principal counsel as long as each is involved in presentation of a substantial part of the criminal proceeding.

3.0 ALTERNATIVE TO TASK REQUIREMENT FOR CERTIFICATION

As an alternative to the criminal trial practice task requirements listed in section 2.0 above, an applicant may qualify by showing:

- 3.1 That the applicant has had substantial involvement in other areas of law practice requiring similar skills as criminal trial practice, such as:
 - 3.1.1 Litigation in contested civil matters involving jury trials;
 - 3.1.2 Appellate practice in either criminal or noncriminal matters in proceedings in which decisions after hearing have been reached; and
 - 3.1.3 Practice in a government agency in which the practitioner is engaged in activities substantially equivalent to criminal law practice.
- 3.2 That the applicant has engaged in research, writing and/or special studies of criminal law and procedure; or
- 3.3 That the applicant possesses some, but not all, of the criminal trial practice task requirements of section 2.0 above; or
- 3.4 Any combination of sections 3.1.1, 3.2 and 3.3 above, which the applicant can show amounts to a substantial equivalent of the criminal law practice task requirements of section 2.0 above; or
- 3.5 Any combination of section 3.1.1, 3.2 and 3.3 above, although not amounting to a substantial equivalent of the criminal law practice task requirements of section 2.0 above; and
 - 3.5.1 Where the geographical location of the applicant prohibits his or her completing the criminal law practice task requirements of section 2.0 above; or
 - 3.5.2 The type of practice of the applicant prohibits his or her completing the criminal law practice task requirements of section 2.0 above; and
 - 3.5.3 Where the exclusion of the applicant from certification as a result of section 3.5.1 or 3.5.2 above would amount to arbitrary exclusion of a practitioner.

4.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION

An applicant must show that, within the three ~~(3)~~ years immediately preceding application for certification, he or she has completed not less than ~~forty five (45)~~ hours of educational activities specifically approved for criminal law as follows:

- 4.1 Evidence;
- 4.2 Trial Advocacy;
- 4.3 Substantive Criminal Law and Procedure;
- 4.4 Writs, Appeals and Ancillary Proceedings; and
- 4.5 Other subjects related to criminal law.

5.0 INDEPENDENT INQUIRY AND REVIEW REQUIREMENT FOR CERTIFICATION

- 5.1 An applicant shall submit the names and mailing addresses of the following:

- 5.1.1 Four ~~(4)~~ lawyers who practice in the same area as the applicant; one ~~(1)~~ judge of a Justice, Municipal or Superior Court within the state of California, or a United States District Court or Federal Magistrate Court, chosen by the applicant, before whom the applicant has appeared as an advocate in criminal proceedings within the two ~~(2)~~ years immediately preceding application; and three ~~(3)~~ California lawyers with whom the applicant has tried a criminal case, but with whom the applicant is not associated.
 - 5.1.2 Opposing counsel, judges and any co-counsel in the last two ~~(2)~~ jury trials conducted by the applicant, if any; and
 - 5.1.3 Opposing counsel, judges and any co-counsel in the last two ~~(2)~~ preliminary hearings conducted by the applicant, if any; and
 - 5.1.4 Opposing counsel, judges and any co-counsel in the last two ~~(2)~~ writ or appellate matters conducted by the applicant as well as copies of all briefs filed by the applicant, if any; and
 - 5.1.5 Opposing counsel, hearing officer or referee and any co-counsel in the last two ~~(2)~~ administrative hearings conducted by the applicant, if any.
- 5.2 The Commission shall select four ~~(4)~~ lawyers or judges who practice or preside in the same area as the applicant for further evaluation of the applicant's proficiency in the practice of criminal law.

6.0 TASK REQUIREMENT FOR RECERTIFICATION

An applicant for recertification must show that:

- 6.1 During the current certification period he or she has personally attended a trial court in California or in any United States District Court, for ~~twenty-five (25)~~ days as principal counsel of record for a party in a single criminal jury trial during the phase of trial commencing at the start of voir dire examination and ending when the case is submitted to the jury or is otherwise earlier concluded. Attendance in court during any part of a day shall be counted as attendance for a full day. Military courts-martial and trials conducted pursuant to the Lanterman-Petris-Short Act shall not be counted as criminal jury trials; or,
- 6.2 During each year of the current five ~~(5)~~ year certification period he or she has participated in five ~~(5)~~ days of criminal jury trials as specified in section 6.1 above; or
- 6.3 During the current five ~~(5)~~ year certification period he or she has presided as a judicial officer for at least ~~sixty (60)~~ days over misdemeanor or felony jury trials or juvenile court proceedings under section 602 of the Welfare and Institutions Code.

7.0 ALTERNATIVE TO TASK REQUIREMENT FOR RECERTIFICATION

As an alternative to the criminal trial practice task requirement listed in section 6.0 above, an applicant may qualify by showing;

- 7.1 That the applicant has had substantial involvement in other areas of law practice requiring similar skills as criminal trial practice, such as;
 - 7.1.1 Litigation in contested civil matters involving jury trials;
 - 7.1.2 Appellate practice in either criminal or noncriminal matters in proceedings in which decisions after hearing have been reached;
 - 7.1.3 Practice in a government agency in which the practitioner is engaged in activities substantially equivalent to criminal law practice; and

- 7.1.4 Active full-time supervision of criminal trial attorneys, which includes one, or a combination of, the following:
 - 7.1.4.1 Charging of complaints;
 - 7.1.4.2 Filing of complaints;
 - 7.1.4.3 Trial strategy and preparation;
 - 7.1.4.4 Appellate review;
 - 7.1.4.5 Legal motions;
 - 7.1.4.6 Preparation and presentation of in-house training.
- 7.2 That the applicant has engaged in research, writing and/or special studies of criminal law and procedure; or
- 7.3 That the applicant possesses some, but not all, of the criminal trial practice task requirements of section 6.0 above; or
- 7.4 Any combination of section 7.1.1, 7.2 and 7.3 above, which the applicant can show amounts to substantial equivalent of the criminal law practice task requirements of section 6.0 above; or
- 7.5 Any combination of 7.1.1, 7.2 and 7.3 above although not amounting to a substantial equivalent of the criminal law practice task requirements of section 6.0 above; and
 - 7.5.1 Where the geographical location of the applicant prohibits his or her completing the criminal law practice task requirements of section 6.0 above; or
 - 7.5.2 The type of practice of the applicant prohibits his or her completing the criminal law practice task requirements of section 6.0 above; and
 - 7.5.3 Where the exclusion of the applicant from certification as a result of section 7.5.1 or 7.5.2 above would amount to arbitrary exclusion of a practitioner.

8.0 EDUCATIONAL REQUIREMENT FOR RECERTIFICATION

An applicant for recertification must show that during the current five ~~(5)~~ year certification period he or she has completed not less than ~~sixty (60)~~ hours of educational activities specifically approved for criminal law specialists.

9.0 INDEPENDENT INQUIRY AND REVIEW REQUIREMENT FOR RECERTIFICATION

An applicant for recertification shall demonstrate proficiency in criminal law through independent inquiry and review in the same manner as set forth in section 5.0 for certification.