

## **STANDARDS – PROPOSED CHANGES**

Proposed revisions to the Specific Area Requirements and comments are attached for the following specialty areas:

●Civil Appellate Law – added the highlighted language so that service on the staff of an appellate court was not limited to only that as a staff or briefing attorney. Work as a law clerk or as an attorney for the court in a position with a different title from staff or briefing attorney is worthy of consideration.

●Criminal Appellate – the highlighted language reflects the standards as originally written and presented to TBLS. TBLS changed the description of the attorney’s role to “lead” in the belief that would apply to the attorney who was primarily responsible in the case. However, the Advisory seeks to return to the original language because applicants might be listed as lead even though they did little or nothing on the case.

●Health Law – the highlighted language includes two new terms and slightly revised wording to more accurately reflect terms used in the practice.

●Immigration and Nationality Law – added language specifying ten petitions/applications must have been handled in the three years immediately preceding application for certification, with at least three of those being based on employment status. The Advisory Commission in this area informs TBLS this is an aspect of the practice in which there is a lot of activity and an applicant should accordingly have experience in it.

●Oil, Gas and Mineral Law – the highlighted language specifies that an applicant must have worked as an attorney rather than as a landman in the three years preceding application, reorganizes some of the transaction groupings, and adds references to “fracking”, seismic operations, horizontal drilling, and appearances before administrative agencies and tribunals.

## CIVIL APPELLATE LAW

- A. **DEFINITION.** Civil appellate law is the practice of law involving proceedings brought before a civil appellate court either by appeal of a final judgment or appealable interlocutory order or by an original proceeding in the appellate court. The preparation and presentation of the court's charge and of post-trial and other dispositive motions at the trial court level shall also be considered the practice of civil appellate law. The practice of civil appellate law that qualifies for substantial involvement and special competence should generally cover multiple areas of procedure and substantive law and not be limited to any one, narrow area of law (unless substantial involvement and special competence can otherwise be shown).

Serving as a judge, on a civil appellate court or as an attorney in an advisory capacity to a civil appellate court (such as a briefing or staff attorney, or a staff attorney-law clerk, or in another position which requires comparable duties) ~~on a civil appellate court~~ is also considered the practice of civil appellate law.

For these purposes "civil appellate courts" include the United States Supreme Court, the Federal Court of Appeals, the Texas Supreme Court, the Texas Courts of Appeals, and comparable courts of other jurisdictions.

- B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in civil appellate law practice by providing such information as may be required by TBLS.

1. **Certification.**

- a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 25% of his or her time practicing civil appellate law during each year of the 3 years immediately preceding application as defined in Section XII, A of the Specific Area Requirements for Civil Appellate Law.
- b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in civil appellate law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
  - (1) Applicant must have handled all or a substantial part of at least 12 civil appellate cases during his or her practice. A case that was submitted to one appellate court and then to a higher court will be considered only one case. Civil appellate cases in which applicant filed a brief or presented oral argument, and original proceedings were filed by applicant in an appellate court (such as petition for writs of mandamus or habeas corpus) are subject to the following additional requirements:
    - (a) All 12 cases must have been fully briefed on the merits at the appellate level;
    - (b) At least 6 of the 12 cases must have been handled by applicant within the 3 years immediately preceding application;
    - (c) Applicant must have been lead counsel in at least 6 of the 12 cases;
    - (d) Applicant must have presented oral argument to an appellate court on one significant issue of substantive or procedural law in at least 4 of the 12 cases;
    - (e) At least 6 of the 12 cases must have involved an appeal from a final judgment or other dispositive order which included a finding on a substantive or procedural issue;
    - (f) In at least 5 of the 12 cases, the appellate court must have issued

- an opinion on the merits that dealt with at least one substantive issue; and
- (g) At least 3 of the 12 cases must have involved the prosecution or defense of a petition to the highest court of the jurisdiction to review the decision of an intermediate appellate court.
- (2) Service as an attorney in an advisory capacity to afor an civil appellate court (such as a briefing or staff attorney, law clerk, or in another position which requires comparable duties) ~~and/or staff attorney~~ for at least 5 years may be considered by TBLS as the equivalent of the requirements set out in Section XII, B,1,b(1)(a-g) above. Service for less than 5 years may be considered proportionally.

## CRIMINAL APPELLATE LAW

### A. DEFINITIONS.

1. Criminal appellate law is the practice of law in a criminal appellate case, which includes the following proceedings:
  - a. Appeal or defense of a judgment or order in a criminal law matter, or juvenile adjudication, to an appellate court;
  - b. Preparation of, or responding to, a petition for discretionary review or related brief to the Texas Court of Criminal Appeals;
  - c. Prosecution or defense of an application for an extraordinary matter, such as Petition for Writ of Mandamus or Application for Original Habeas Corpus, to the Texas Court of Criminal Appeals, a Texas Court of Appeals, United States District Court, or United States Circuit Court of Appeals, in a criminal matter;
  - d. Prosecution or defense of an application for post-conviction writ of habeas corpus from a misdemeanor conviction to a statutory county court exercising habeas corpus jurisdiction, or from a final felony conviction in Texas state court, either capital or non-capital;
  - e. Prosecution or defense of an application for habeas corpus from a final felony conviction, either capital or non-capital, in United States District Court under 28 USC §2254, or 28 USC §2255;
  - f. Prosecution or defense of an appeal to a United States Circuit Court of Appeals from the judgment of a United States District Court in an action under 28 USC §2254 or 28 USC §2255; or
  - g. Prosecution or defense of any criminal law matter at the United States Supreme Court.
2. Applicable appellate courts include the:
  - a. United States Supreme Court;
  - b. United States Circuit Courts of Appeals;
  - c. Texas Supreme Court exercising jurisdiction over adjudications in a juvenile case;
  - d. Texas Court of Criminal Appeals;
  - e. Texas Courts of Appeals;
  - f. Texas District Courts exercising post-conviction habeas corpus jurisdiction under Article V §8, Texas Constitution, or Articles 11.07, 11.071 or 11.072, Code of Criminal Procedure;
  - g. United States District Courts exercising post-conviction habeas corpus jurisdiction under 28 USC §2254 or 28 USC §2255; and

- h. Statutory Texas county courts sitting as Courts of Appeals in cases under Title II, Chapter 30, Government Code or exercising post-conviction habeas corpus jurisdiction under Article V §16, Texas Constitution, or Article 11.072, Code of Criminal procedure.

**B. SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in criminal appellate law practice by providing such information as may be required by TBLS.

1. **Certification.**

- a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 25% of his or her time practicing criminal appellate law during each year of the 3 years immediately preceding application as defined in Section XVIII, A of the Specific Area Requirements for Criminal Appellate Law.

- b. **Task Requirements.** Applicant must provide information concerning specific tasks he or she has performed in criminal appellate law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

- (1) Applicant shall provide information regarding his or her participation in each of the following types of criminal appellate cases during his or her entire practice:

- (a) Appeal or defense of a judgment or order in a criminal law matter, or juvenile adjudication, to a criminal appellate court;
- (b) Preparation of, or responding to, a petition for discretionary review or related brief to the Texas Court of Criminal Appeals;
- (c) Prosecution or defense of an application for an extraordinary matter, such as petition for writ of mandamus or application for original habeas corpus, to the Texas Court of Criminal Appeals, a Texas Court of Appeals, United States District Court, or United States Circuit Court of Appeals, in a criminal matter;
- (d) Prosecution or defense of an application for post-conviction writ of habeas corpus from a misdemeanor conviction to a statutory county court exercising habeas corpus jurisdiction, or from a final felony conviction in Texas state court, either capital or non-capital;
- (e) Prosecution or defense of an application for habeas corpus from a final felony conviction, either capital or non-capital, in United States District Court under 28 USC §2254, or 28 USC §2255;
- (f) Prosecution or defense of an appeal to a United States Circuit Court of Appeals from the judgment of a United States District Court in an action under 28 USC §2254 or 28 USC §2255; and
- (g) Prosecution or defense of any criminal law matter at the United States Supreme Court.

- (2) *Anders* briefs shall not satisfy any task requirement.

- (3) Applicant, as ~~lead~~ as an attorney for a party to a criminal appellate case, shall have been listed as a signatory to and have personally performed substantial work in, drafting the pleadings or brief for that party in a minimum of 50 tasks as defined in B, 1, b, (1) (a-g) above of these during his or her entire practice. Of these 50 tasks, applicant shall have:

- (a) handled at least 25 tasks within the 3 years immediately preceding application; and
- (b) performed a minimum of 5 oral arguments at a Court of Appeals, the Texas Court of Criminal Appeals, a United States Circuit Court of Appeals, or the United States Supreme Court during his or her entire practice.

- (4) Service as an attorney in an advisory capacity to a for-a criminal appellate court (such as a briefing or staff attorney, and/or staff attorney law clerk, or in another position which requires comparable duties) for at least 5 years may be considered by TBLS as the equivalent of the requirements set out in Section XVIII, B, 1, b, (1) (a-g) above. Service for less than 5 years may be considered proportionally.

## HEALTH LAW

- A. **DEFINITION.** Health law is the practice of law dealing with federal, state, and local law, rules and regulations, and other jurisprudence affecting the health care industry and health care patients. It primarily deals with the operational, regulatory, and transactional legal issues arising from the application of these laws, rules, and regulations to patients, health care providers, health care vendors, and entities which pay for health care services, including without limitation, the relationships among providers, payors, vendors, and patients in the health care industry; and delivery of health care services.
- B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in Texas health law by providing such information as may be required by TBLS.
1. **Certification.**
- a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 35% of his or her time practicing health law in Texas during each year of the 3 years immediately preceding application as defined in Section XVI, A of the Specific Area Requirements for Health Law.
- b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in Texas health law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
- (1) Applicant must have handled as lead counsel or in a primary capacity, several of the categories listed below in order to sufficiently demonstrate an expertise in Texas health law within the 3 years immediately preceding application by (i) counseling clients and educating clients which may include trade associations, (ii) advising or counseling clients with respect to the establishment or modification of procedures, practices, forms, programs, or transactions to comply with laws in those areas as they relate to health law, or (iii) representing clients in preparation of claims handled through mediation, arbitration, or litigation.
- (a) Health care antitrust;
  - (b) Fraud and abuse/referral prohibitions;
  - (c) Health care contract issues;
  - (d) Managed care and managed care organizations;
  - (e) Risk management/quality assurance/utilization review/patient safety;
  - (f) Licensure and certification;
  - (g) Patient rights;
  - (h) State licensing and federal COPs;
  - ~~(h)~~ Medical staff/professional rights;
  - ~~(i)~~ Physicians practice issues;

- (~~jk~~) Reimbursement and coverage (state and federal);
- (~~kl~~) Finance including tax/tax exemptions;
- (~~lm~~) Administrative proceedings;
- (~~mn~~) Hospital/institutional operations;
- (~~no~~) Mental health;
- (~~op~~) Drugs, devices, and IRBs;
- (~~pq~~) Business organizations, mergers and acquisitions;
- (~~qr~~) Labor and employment law;
- (~~rs~~) Health information technology, Privacyprivacy, confidentiality, and the HIPAA ~~Privacy Rules~~security and privacy;
- (~~st~~) Governmental entities/political subdivisions; and
- (~~tu~~) Long term care.

## IMMIGRATION AND NATIONALITY LAW

- A. **DEFINITION.** Immigration and nationality law is the practice of law dealing with the Immigration and Nationality Act of 1952, as amended, and all successor and other laws and regulations dealing with immigration and naturalization. The practice includes, by way of definition and not limitation,
- all aspects of securing an immigrant or non-immigrant visa or other documentation to enter the United States, including all petitions and applications filed with the U. S. Department of State, the U. S. Department of Labor, the U. S. Department of Justice, the U. S. Department of Homeland Security, and the U. S. Public Health Service;
  - naturalization proceedings;
  - citizenship proceedings;
  - asylum applications;
  - removal proceedings and related applications for relief;
  - bond and custody proceedings;
  - rescission proceedings;
  - registry proceedings;
  - administrative proceedings not listed above relating to immigration and nationality law before government agencies of competent jurisdiction;
  - all administrative and judicial review of the above; and
  - original proceedings in immigration matters before judicial courts.
- B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in immigration and nationality law practice by providing such information as may be required by TBLS.
1. **Certification.**
    - a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 25% of his or her time practicing immigration and nationality law during each year of the 3 years immediately preceding application as defined in Section VII, A of the Specific Area Requirements for Immigration and Nationality Law.
    - b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in immigration and nationality law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
      - (1) Applicant must exhibit substantial involvement and special competence

in each of the following immigration and nationality law matters participated in within the 3 years immediately preceding application.

- (a) Administrative Hearings. Representation of clients in at least 9 contested hearings before immigration judges involving removal or bond determination. No more than 3 of the 9 hearings may have involved only bond matters.
  - (b) Petitions and Applications. Representation of clients before the U.S. Department of Homeland Security and/or the U.S. Department of State in the preparation and filing of petitions and applications. A minimum of 10 petitions or applications must have been filed within the 3 years immediately preceding application. No less than 3 must be employment based petitions.
  - (c) Citizenship/Naturalization. Representation of clients before the U.S. Department of Homeland Security, U.S. Department of State, and/or judicial courts in citizenship, naturalization, and/or renunciation or revocation matters.
- (2) In addition to meeting Section VII, B, 1, b, (1), (a-c) above, applicant must meet two of the following categories within the 3 years immediately preceding application.
- (a) Alien Labor Certifications. Representation of employers and/or aliens before the various state employment services, U.S. Department of Labor, and U.S. Department of Homeland Security in preparation and filing of alien labor certification cases.
  - (b) Administrative Appeals and Advisory Opinions. Representation of clients in appeals and/or proceedings before the Board of Immigration Appeals, Administrative Appeals Office, Board of Alien Labor Certification Appeals, the U.S. Department of State Advisory Opinions office, or other administrative appellate entities with competent jurisdiction over matters related to immigration and nationality law.
  - (c) Review in Judicial Courts. Representation of clients in judicial matters relating to immigration and nationality law such as applications for writs of habeas corpus, mandamus, declaratory judgments, criminal matters involving the immigration law, petitions for review in judicial courts, and ancillary proceedings in judicial courts.
  - (d) Employer Sanctions. Representation of clients in administrative proceedings relating to employer sanction, employment discrimination, and/or document fraud matters under the Immigration Nationality Act.
  - (e) Deferred Inspections, Expedited Removal, Humanitarian Parole, Documentary Waiver Requests, Deferred Action Requests, Private Bills, I-9 and LCA related Audits and Proceedings, Immigration Related Database Corrections, or other administrative proceedings not listed relating to immigration and nationality matters before governmental agencies of competent jurisdiction. Representation of clients in these types of matters.



## OIL, GAS AND MINERAL LAW

- A. **DEFINITION.** Oil, gas and mineral law comprises law applicable to oil, gas and other minerals and interests in oil, gas and other minerals and to the acquisition, ownership, leasing, development, transfer, disposition and financing of these substances. The practice of oil, gas and mineral law requires, without limitation,
- knowledge of land titles and surface use;
  - conveyances, contracts and other documents typically used in oil, gas and other mineral transactions;
  - statutes and regulations affecting oil, gas and minerals;
  - litigation involving oil, gas and mineral rights; and
  - the taxation of oil, gas and other minerals and of transactions concerning them.
- B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in Texas oil, gas and mineral law practice by providing such information as may be required by TBLS.
1. **Certification.**
- a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 35% of his or her time practicing Texas oil, gas and mineral law during each year of the 3 years immediately preceding application as defined in Section XI, A of the Specific Area Requirements for Oil, Gas and Mineral Law. If the applicant has worked as a landman during any of these 3 years, the time worked as a landman will not count towards the percentage of practice requirement.
- b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in Texas oil, gas and mineral law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
- (1) Applicant must provide the number of matters or transactions he or she has handled in the following categories within the 3 years immediately preceding application:
- (a) Oil, gas and mineral leases,
  - (b) Lease assignments,
  - (c) Drilling or division order title opinions,
  - (d) Division orders,
  - (e) ~~Gas purchase~~ Purchase and sales contracts for oil, gas and minerals,
  - (f) Lease ratifications,
  - (g) Pooling or unitization agreements,
  - (h) Farmout agreements,
  - (i) Drilling and service contracts,
  - (j) Operating agreements,
  - (k) Mineral or royalty deeds,
  - (l) Easements, surface use and / or damage agreements,
  - (m) ~~Surface use and /or damage agreements~~ Gathering, processing and transportation agreements,
  - (n) Oil, gas and mineral deeds of trust,
  - (o) Oil, gas and mineral financing transactions,
  - (p) Sales, ~~and~~ purchases and trades of oil, gas and mineral properties,
  - (q) Lease operations disputes,



- ~~(r)~~ — ~~Oil, gas and mineral litigation,~~
  - ~~(sr)~~ Ad valorem ~~and other~~ tax matters,
  - ~~(ts)~~ Environmental ~~issues,~~ agreements or claims, including those related to hydraulic fracturing,
  - ~~(ut)~~ Seismic agreements and the right of oil and gas operators to conduct seismic operations,
  - ~~(vu)~~ Mineral contractor liens,
  - ~~(v)~~ Issues related to royalty payment, including production valuation and the deduction of post-production costs,
  - ~~(w)~~ — ~~Administration or other regulatory matters, and~~
  - ~~(w)~~ Issues arising out of horizontal drilling, including regulatory issues and the ownership of production,
  - ~~(x)~~ Areas of mutual interest, participation and development agreements, and
  - ~~(xy)~~ Other oil, gas and mineral law matters or transactions.
- ~~(2)~~ — ~~Applicant must list regulatory agency(s) and the number of clients he or she has represented before that agency within the 3 years immediately preceding application.~~
  - ~~(2)~~ Applicant must provide the number of matters in which he or she has provided substantive oil, gas or mineral law representation before regulatory agencies (e.g., the Railroad Commission of Texas, the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, the Federal Energy Regulatory Commission) within the 3 years immediately preceding application, along with a summary of the nature of such representation.
  - ~~(3)~~ Applicant must provide the number of matters in which he or she has provided substantive oil, gas or mineral law representation before any tribunals (e.g., trial courts, appellate courts, arbitration panels, mediations) within the 3 years immediately preceding application, along with a summary of the nature of such representation.
  - ~~(34)~~ Applicant must submit a resume or job summary reflecting his or her activities for at least 5 years immediately preceding application.