

EXAM SPECIFICATIONS FOR CRIMINAL APPELLATE LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in criminal appellate law.

EXAM FORMAT. The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple choice questions (10 of which involve professional ethics) each worth 2 points. The required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLS.

EXAM GRADING. All exam materials are confidential and not available for review. Essay answers are graded anonymously and identified only by an assigned examinee number. Multiple choice answers are computer graded. Successful examinees are notified that they passed but are not provided with their specific score. Unsuccessful examinees are notified of their exam score. Exams that score 10 points below the passing grade are automatically regraded. Exam results are final.

ESSAY QUESTIONS. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The questions involve situations you would likely encounter in your practice. Essays typically include the effect of trial court rulings on the appellate process, appellate deadlines, sufficiency of evidence, applicable standards of review and post-conviction remedies initiated in trial courts. Applicants should ensure they provide the specific information each question requests and communicate their response as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. In order to pass the exam, applicants must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

MULTIPLE CHOICE QUESTIONS. These questions are designed to test a breadth of issues in the specialty area and require an applicant to select the option that represents the **best** available answer.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES. An applicant in criminal appellate law is expected to understand the entire process of appeals of state and federal criminal cases, as well as applications for extraordinary relief and post-conviction writ proceedings in state and federal court. A more detailed list of the knowledge, skills and abilities are set out below.

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM UNLESS OTHERWISE SPECIFIED.

- 1. Matters Arising in the Trial Court (State and Federal)**
 - a. Motion for new trial
 - b. Preservation of error
 - c. Certification of appeal
 - d. Perfection of appeal

- e. Appeals from deferred adjudication and motions to revoke
 - f. Orders and judgments that can be appealed
 - g. Post-judgment orders, e.g., nunc pro tunc, resentencing, restitution
 - h. The appellate record
 - i. Indigency on appeal/appointed counsel/free record
- 2. Direct Appeal (State Courts of Appeal and Federal Fifth Circuit)**
- a. Docketing statement
 - b. Deadlines and timelines for appeal
 - c. Appellate jurisdiction
 - d. Requisites of the brief
 - e. Motions
 - f. Abatements and remands
 - g. *Anders* briefs
 - h. Non-record material and references
 - i. Citation of authority; reasons for publication
 - j. Standards of review
 - k. Sufficiency of the evidence
 - l. Opinions and mandates
 - m. Motions for rehearing and reconsideration *en banc*
 - n. Fundamental error / Structural error
 - o. Harmless error
- 3. Discretionary Review (CCA and Supreme Court of the United States)**
- a. Deadlines and timelines
 - b. Requisites of the petition
 - c. Reasons for review
 - d. Preservation issues in the CCA
 - e. *Degrade* petitions
 - f. Federal questions and petitions for certiorari
 - g. Non-compliant petitions
 - h. Motions
 - i. Petition for discretionary review vs. brief on the merits
 - j. Direct appeals in death penalty cases
 - k. Petitions for certiorari in the U.S. Supreme Court
- 4. Writs of Habeas Corpus and Other Extraordinary Writs**
- a. Pre-trial writs of habeas corpus
 - b. Writs of mandamus and prohibition
 - (1) When appropriate
 - (2) Cognizable issues
 - (3) Subsequent Applications
 - (4) Record
 - (5) Filing
 - c. Misdemeanor post-conviction writs
 - d. 11.072 writs--community supervision

- e. 11.07 post-conviction writs
 - (1) Application form
 - (2) Cognizable issues
 - (3) Subsequent Applications
 - (4) Subsequent writs
 - (5) Deadlines and laches
 - (6) Pleading requirements
 - (7) Effect of State's failure to respond; convicting court's failure to act
 - (8) Findings of fact and conclusions of law
- f. 11.071 post-conviction death penalty writs
- g. Federal writs under 28 U.S.C. §2254
 - (1) Exhaustion
 - (2) AEDPA
 - (3) Timelines and deadlines
 - (4) Application form
 - (5) Procedural bars and equity issues
- h. Federal writs under 28 U.S.C. §2255
- i. Rule 60(b) of the Federal Rules of Civil Procedure

5. Miscellaneous

- a. Oral Argument
- b. Juvenile appeals
- c. Appeals from municipal and justice of the peace judgments
- d. Right to an attorney/self-representation
- e. Attorney obligations to inform client
- f. State's right to appeal—Art. 44.01
- g. Retroactivity of appellate decisions
- h. Bail on appeal
- i. Extradition appeals
- j. Chapter 64 appeals
- k. Expunctions
- l. Non-disclosures
- m. Competency to be executed

6. The Texas Disciplinary Rules of Professional Conduct. The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

SKILLS.

An applicant must demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel and courts
- Develop and evaluate strategies for solving a problem or accomplishing an objective
- Analyze and apply legal rules and principles
- Analyze, sort and use facts; plan and direct factual investigations
- Organize and manage a legal task efficiently within time constraints
- Represent a client consistent with applicable ethical standards
- Invoke and utilize the procedures normally required in the specialty area, including pleadings and filings

Specifically, applicant must be able to:

- Evaluate the merits of a possible appeal; develop an appellate strategy and identify remedies
- Draft motions, briefs, habeas applications for state and federal courts
- Identify applicable deadlines and requisites of filings
- Conduct investigations and research; assimilate and review records
- Use appropriate citation forms and precedent
- Distinguish effective briefs on direct appeal from those on discretionary review
- Draft motions and findings relating to trial court determinations
- Distinguish state and federal requirements for briefs and habeas applications