

# TEXAS BOARD OF LEGAL SPECIALIZATION STANDARDS FOR ATTORNEY CERTIFICATION

These Standards for Attorney Certification are established by the Texas Board of Legal Specialization after approval of the Supreme Court of Texas.

**The Standards for Attorney Certification are divided into two parts.**

**PART I, GENERAL REQUIREMENTS:** These requirements apply to all specialty areas.

**PART II, SPECIFIC AREA REQUIREMENTS:** These are specific requirements that apply to the individual specialty areas. Included are the definitions, substantial involvement, and other requirements for certification and recertification. For example, “Specific Area Requirements for Criminal Law” refers to the specific requirements for certification and recertification in criminal law.

## **Definitions as used in these Standards:**

“**TBLS**” refers to the Texas Board of Legal Specialization.

“**SBOT**” refers to the State Bar of Texas.

“**CLE**” refers to continuing legal or judicial education.

“**Plan**” refers to the Texas Plan for Recognition and Regulation of Specialization in the Law.

“**Rules**” refers to the Attorney Rules and Regulations of TBLS.

“**Applicant**” refers to either a certification or recertification applicant unless otherwise specifically stated.

“**Standards**” refers to the Standards for Attorney Certification. The Standards are composed of both the General Requirements and the Specific Area Requirements.

## **PART I GENERAL REQUIREMENTS**

### **SECTION I PREFACE**

The Supreme Court of Texas has prescribed the following requirements for board certification pursuant to the recommendation of TBLS.

- A.** The purpose of these Standards is to recognize those attorneys having special competence in one or more of the specialty areas included in these Standards. In making the determination of special competence, TBLS will consider the following:
1. The substance and complexity of the tasks submitted to show the required substantial involvement in the specialty area;
  2. The professional accomplishments of the attorney in the specialty area;
  3. The skill and ability of an attorney in the specialty area;
  4. The knowledge of the attorney as shown on the specialty area examination; and
  5. The character and fitness of the attorney.

- B. No standard shall in any way limit the right of a board certified attorney to practice in all areas of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though board certified in a specific area of law.
- C. No attorney shall be required to obtain board certification before practicing in any area of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in any area of law, even though not board certified in that area.
- D. Board certification is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm of which a board certified attorney is a member.

## SECTION II GENERAL REQUIREMENTS

### A. **MEMBERSHIP AND PRACTICE.**

- 1. **SBOT Membership.** An applicant and board certified attorney must be an active member in good standing of the SBOT.
- 2. **Texas Office and Practice.**
  - a. **Certification Applicant.** For the 3 years immediately preceding application, a certification applicant must have maintained a Texas office from which he or she personally conducts business an average of at least 3 days per week, until certification is achieved. Failure to meet this requirement will result in denial of application. TBLS may waive this requirement upon a showing of good cause.
  - b. **Board Certified Attorney and Recertification Applicant.** A board certified attorney and recertification applicant must continue to meet the substantial involvement requirements pertinent to the specialty area whether or not an office is maintained in Texas. For other recertification qualifications, refer to the applicable Specific Area Requirements.

- B. **FORMS.** Documents, applications, questionnaires, and examinations involved in the certification and recertification process shall be prescribed and approved by TBLS.
- C. **FEES.** An applicant and board certified attorney shall timely pay the required fees established by TBLS.
- D. **EXPIRATION OF CERTIFICATION.** Certification shall be for a period of 5 years at the end of which time recertification shall be permitted upon the terms and conditions established by TBLS.
- E. **REVOCATION OF CERTIFICATION.** A certificate of special competence issued by TBLS may be revoked for good cause as determined by TBLS.
- F. **FAILURE TO FURNISH INFORMATION AND MISREPRESENTATION.** Certification or recertification may be denied, revoked, or other appropriate action taken because of an applicant's or board certified attorney's failure to furnish the information requested by TBLS or because of his or her misrepresentation of any material fact to TBLS.
- G. **REQUIRED PERIOD OF LAW PRACTICE.** An applicant for certification shall have been engaged in the practice of law for a period of at least 5 years on a full-time basis. Years of practice need not be consecutive.
- H. **DEFINITION OF THE PRACTICE OF LAW.** "Practice of law" means full-time legal work done primarily for the purpose of providing legal advice or representation. After admission to the bar of any state of the District of Columbia, service as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to

the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of providing legal advice to, or representation of, the corporation or government agency or individuals connected therewith. TBLS may allow other legal work, such as teaching law or writing legal publications, to be combined with the part-time practice of law to satisfy this requirement.

### **SECTION III DISCLOSURE OF CONDUCT**

#### **A. DISCIPLINARY SANCTIONS.**

1. At the time of filing an application, a certification applicant must disclose whether the applicant has:
  - a. ever been sanctioned for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct by any authorized disciplinary authority, including a court;
  - b. ever been sanctioned, censured, ordered to retire, or removed from a judicial office for violating the Texas Code of Judicial Conduct or other judicial ethical standards (“judicial misconduct”) by any authorized disciplinary authority;
  - c. a pending investigation or proceeding for professional misconduct; or
  - d. a pending investigation or proceeding for judicial misconduct.
2. During the application process, the applicant has a continuing duty to promptly report to TBLS the institution of a disciplinary investigation or proceeding or the receipt of a disciplinary sanction, censure, order to retire, or order of removal from judicial office as described above and to provide additional information TBLS may request on such matters.
3. A board certified attorney has a continuing duty to report and provide additional information requested by TBLS on:
  - a. any sanction for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct by any authorized disciplinary authority, including a court;
  - b. any sanction, censure, order of retirement, or order of removal from judicial office by any authorized disciplinary authority;
  - c. any pending investigation or proceeding for professional misconduct; or
  - d. any pending investigation or proceeding for judicial misconduct.
4. TBLS may deny certification or recertification, revoke certification, or take other appropriate action upon a finding that an applicant or board certified attorney has engaged in professional misconduct or judicial misconduct as defined above or upon notice of a pending investigation or proceeding for professional misconduct or judicial misconduct concerning the applicant or board certified attorney. In deciding what action is appropriate, TBLS will consider the seriousness of the underlying facts included in the findings, the passage of time, and the conduct of an applicant or board certified attorney since the findings were made or the sanction, censure, retirement, or removal ordered.
5. Failure to disclose an investigation proceeding, sanction, censure, order of retirement, or order of removal from office, or the failure to respond to a request for information from TBLS on such matters will be considered a material misrepresentation and may be cause for denial, revocation, or other appropriate action by TBLS.

#### **B. CRIMINAL CONVICTION.**

1. An applicant or board certified attorney shall disclose whether he or she has ever been convicted of, or given probation or fined for, a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term “serious crime” includes barratry; any felony; any lesser

- offense involving dishonesty, misappropriation of money or other property or conduct that adversely affects the administration of justice; and any attempt, conspiracy or solicitation of another to commit any of the foregoing crimes.
2. TBLS may deny certification or recertification, revoke certification, or take other appropriate action if an applicant or board certified attorney has been convicted, given probation or fined for a serious crime as defined in this Section.

## **SECTION IV REFERENCES**

### **A. REFERENCE REQUIREMENTS.**

1. Except as provided in paragraph 2, an applicant must submit names and addresses of persons to be contacted as references to attest to the applicant's competence in the specialty area. For the types of references required for each specialty area, refer to the appropriate Specific Area Requirements. These persons must be:
  - a. individuals who are not partners or associates of the applicant.
  - b. with respect to a certification applicant, individuals with whom the applicant has had dealings in the 3 years immediately preceding application; and
  - c. with respect to a recertification applicant, individuals with whom the applicant has had dealings since certification or the most recent recertification.
2. References for an applicant currently serving as a judge must be selected by TBLS rather than submitted by the applicant.
3. TBLS may, at its option, request references from other attorneys, judges, or both.
4. A Confidential Statement of Reference Form approved by TBLS will be submitted by TBLS directly to the selected references and must be returned directly to TBLS.

### **B. EVALUATION OF REFERENCE INFORMATION.** In evaluating reference information on an applicant, TBLS must consider the knowledge and experience of the references in the applicant's specialty area and the nature of the dealings between the references and the applicant.

### **C. CONFIDENTIALITY.** All Statements of Reference received by TBLS are confidential.

### **D. DENIAL.** TBLS may deny certification or recertification based on information received through the reference process. General information concerning the denial must be provided to the applicant subject to the confidentiality rule.

## **SECTION V CONTINUING LEGAL OR JUDICIAL EDUCATION**

### **A. CLE REQUIREMENT.**

1. Certification. A certification applicant must complete 60 hours of CLE in the specialty area within the 3 years immediately preceding application, through December 31 of the year of application.
2. Recertification.
  - a. Except as provided in (b), a recertification applicant must complete 100 hours of CLE in the specialty area by December 31 of each 5th year of certification.
  - b. A Judicial Administration recertification applicant must complete 105 hours of CLE by December 31 of each 5th year of certification.

- B. QUALIFYING CLE.** An applicant or board certified attorney must obtain CLE credit in the specialty area in which certification or recertification is sought by the following methods:
1. Attendance at a live CLE program, including live video conferences;
  2. Viewing or listening to an on-line CLE program;
  3. Participating in a CLE teleconference;
  4. Attendance at a showing of a CLE video;
  5. Self-study such as reading cases or legal periodicals, subject to the limitation of 5 hours credit each calendar year; or
  6. Other activity in the specialty area, to be determined on an individual basis, such as:
    - a. Teaching a CLE course for attorneys or paralegals;
    - b. Participation as a panelist or speaking on a symposium or similar program;
    - c. Attendance at a lecture series or similar program sponsored by a qualified education institution or bar group;
    - d. Authorship of a book or article published in a professional publication or journal; and
    - e. Active participation in the work of a professional committee dealing with a specific problem in the specialty area.

## **SECTION VI SUBSTANTIAL INVOLVEMENT**

- A. PERCENTAGE OF PRACTICE OR YEARS OF SERVICE REQUIREMENT IN THE SPECIALTY AREA.** An applicant's or board certified attorney's failure to meet the percentage of practice or years of service requirements set forth in the Specific Area Requirements may be grounds for denial or revocation.
- B. SPECIFIC TASKS REQUIREMENTS.** An applicant must provide information as required by TBLS concerning specific tasks the applicant has performed in the applicable specialty area. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by an applicant in the specialty area.
- C. EXCEPTIONS.** A certification applicant is expected to meet the specific tasks requirements listed in the Specific Area Requirements in the specialty area. TBLS may permit exceptions for an applicant who does not meet the specific task requirements specified in an individual specialty area. .
1. Judicial Experience.
    - a. Certification Applicant. TBLS may permit a certification applicant to substitute judicial experience appropriate to each specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters the certification applicant has handled in the specialty area. The judicial experience must be at least equivalent to the specific task requirements of the specialty area, and the determination of equivalency is in the sole discretion of TBLS.
    - b. Board Certified Attorney and Recertification Applicant.
      - (i) TBLS may exempt a board certified attorney or recertification applicant who is serving as a judge from all requirements during his or her judicial service except for the requirement to:
        - (A) pay the annual fee;
        - (B) disclose conduct under Section III, and
        - (C) for the judicial administration specialty area, complete CLE under Section V and any requirements in the Specific Area Requirements.

- (ii) With the exception of those certified in the judicial administration specialty area, if a board certified attorney desires to continue certification after December 31 of the calendar year which he or she ceases to serve as a judge, he or she must timely complete the recertification process with TBLS and must comply with the TBLS Rules. A board certified attorney whose certification was extended by reason of service as a judge must satisfy all the requirements for recertification except that, for purposes of the initial recertification only, the substantial involvement requirement will be waived and the CLE requirement will be prorated based on the year in which the board certified attorney ceased judicial service.
- 2. Unusual or Exceptional Experience. TBLS may permit a certification applicant to substitute unusual or exceptional experience for one or more of the specific area requirements in the specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters that the certification applicant has handled in the specialty area. The unusual or exceptional experience must be at least equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency is in the sole discretion of TBLS.

## **SECTION VII EXAMINATION**

- A. PASSING OF AN EXAMINATION. A certification applicant must pass a written examination applied uniformly to all certification applicants to demonstrate sufficient knowledge, proficiency, and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public.
- B. FAILURE OF AN EXAMINATION. After a certification applicant has taken and failed an examination 3 times in a specialty area, the applicant is ineligible to apply for the next 3 years' examination in that specialty area.

## **SECTION VIII SENIOR STATUS DESIGNATION**

- A. WHO MAY QUALIFY. A board certified attorney may apply for senior status designation in a particular specialty area if the attorney is no longer practicing law on a full-time basis, is at least 70 years old, and has been a board certified attorney in that specialty area for at least 20 consecutive years.
- B. APPLICATION. A board certified attorney shall apply for senior status designation on a form prescribed and approved by TBLS.
- C. TERM. The senior status designation, if granted by TBLS, shall expire upon retirement of the board certified attorney or expiration, resignation, or revocation of his or her certificate of special competence.
- D. REQUIREMENTS.
  - 1. TBLS Standards for Attorney Certification Apply. Except as modified by Section VIII.D.2 below, a board certified attorney who is granted senior status is subject to both the general and area-specific requirements unique to the board certified attorney's specialty area that are set forth in TBLS Standards for Attorney Certification, including the requirement that the board certified attorney remain an active member in good standing with the SBOT.

2. Modifications. A board certified attorney who is granted senior status must:
  - a. Required Law Practice. Maintain at least a part-time practice of law with a minimum average of 20 hours per week of legal work done primarily for the purpose of providing legal advice or representation. Legal work may be pro bono or volunteer work.
  - b. CLE. For recertification, complete 75 hours of CLE in the specialty area by December 31 of each 5th year of certification.
  - c. Substantial Involvement. Devote a minimum of 25% of his or her time practicing law in the specialty area during each year of the 5-year period of certification.
  - d. References. For recertification, submit a minimum of 5 names and addresses of attorneys, judges, or both to be contacted as references with whom he or she has had dealings involving matters in the attorney's specialty area since the most recent recertification.
  - e. Fees. Pay the required fees except the recertification fee.

E. **DISCLOSURE PROHIBITED.** The senior status designation is an internal designation TBLS utilizes to categorize certifications. A board certified attorney granted senior status designation shall not use the senior status designation on any professional or advertisement materials, including letterhead, business cards, signs, brochures, websites, or social media.

# TEXAS BOARD OF LEGAL SPECIALIZATION

## STANDARDS FOR ATTORNEY CERTIFICATION

### PART II

### SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

### SECTION III

### LABOR AND EMPLOYMENT LAW

*(Area ID: LB / Year Started: 1975)*

- A. **DEFINITION.** Labor and employment law is the practice of law dealing with the relationships among employers, employees or their labor organizations, except workers' compensation. It includes, by way of definition not limitation, State or Federal laws regulating or involving:
- Labor relations (National Labor Relations Act),
  - Occupational Safety and Health (does not include workers' compensation or non-subscriber matters),
  - Equal Employment Opportunity,
  - Wage and Hour and leave matters, including FLSA, FMLA, USERRA, Texas Payday Act, and judicial review of unemployment compensation matters,
  - Employment-related torts, employment contracts, and 42 U.S.C. 1983 employment litigation, and
  - Whistleblowers and non-EEO retaliation.

The practice of law dealing with ERISA, bankruptcy, and administrative proceedings may, under the proper circumstances, constitute the practice of labor and employment law within the meaning of this section.

- B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in labor and employment 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 labor and employment law during each year of the 3 years immediately preceding application as defined in Section III, A of the Specific Area Requirements for Labor and Employment Law.
- b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in labor and employment law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
  - (1) Applicant must show that he or she has engaged directly and substantially in a broad practice of labor and employment law within the 3 years immediately preceding application in at least 3 of the areas within the definition of labor and



employment law as set forth in Section III, A above, one of which must be practice involving the National Labor Relations Act. Applicant must submit required information concerning such practice, the frequency of the work, the jurisdictions involved, and the nature of the issues involved.

- (a) Applicant must show practice involving laws regulating or involving labor relations (National Labor Relations Act) by one of the following methods:
  - i. Actual experience through practice, or
  - ii. Completion of a minimum of 24 hours of continuing legal education (CLE) in comprehensive courses on the National Labor Relations Act, completed within the 3 years immediately preceding the application through June 1 of the year of application. The substitution of CLE in lieu of actual practice involving the National Labor Relations Act is in addition to the CLE requirement submitted to satisfy Part I-General Requirements, Section V, A,1.
- (b) In addition to meeting the above requirement, applicant must show that he or she has been engaged directly and substantially in 2 additional areas within the definition of labor and employment law as set forth in Section III, A above.
- (c) Applicant must show by detailed response that he or she has engaged at a significant level of responsibility in litigation in federal or state court or arbitration in at least one of the 3 areas applicant submitted to satisfy Section III, B,1,b(1)(a-b) above.

- 2. **Recertification.** Applicant must have devoted a minimum of 25% of his or her time practicing labor and employment law during each year of the 5 year period of certification as defined in Section III, A of the Specific Area Requirements for Labor and Employment Law except as provided for in Part I-General Requirements, Section VI, C,1(b).

**C. REFERENCE REQUIREMENTS.** Applicant shall submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in labor and employment law. These persons shall be substantially involved in labor and employment law, and be familiar with applicant's labor and employment law practice.

- 1. **Certification.** Applicant shall submit names of persons with whom he or she has had dealings involving labor and employment law matters within the 3 years immediately preceding application.
- 2. **Recertification.** Applicant shall submit names of persons with whom he or she has had dealings involving labor and employment law matters since certification or the most recent recertification.
- 3. **Reference Types.** Applicant shall submit the following types of references:
  - a. Four attorneys who are substantially involved in labor and employment law. Applicant shall have been involved in litigation or arbitration with or against one of these attorneys in a labor and employment law matter.
  - b. One of the following before whom applicant has appeared as an advocate in a labor or employment law matter:
    - (i) A judge of any court of record,
    - (ii) An arbitrator, or
    - (iii) An administrative law judge.