

PART II -
SPECIFIC AREA REQUIREMENTS
FOR
SECTION XXII - CIVIL APPELLATE LAW

SECTION I
SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE

- A. ~~Definition~~**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 ~~which~~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 or a briefing attorney or a staff attorney 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. ~~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.~~ For the specific area requirements please refer to the sections below.
- B. ~~Substantial Involvement for Certification~~**SUBSTANTIAL INVOLVEMENT**
1. Certification. ~~applicants~~Applicant must show substantial involvement and special competence in civil appellate law practice ~~during each of the 3 years immediately preceding application~~ by providing such information as may be required by ~~the~~ TBLS.
- 1a. Percentage of Practice Requirement. ~~Certification applicants~~Applicant must show that ~~during each of the 3 years immediately preceding application~~ they have devoted a minimum of 25% of their ~~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 shall provide information concerning civil appellate law as described in the definition. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant in civil appellate law.

- ~~2.~~ Certification applicants shall provide such information as may be required by the TBLS regarding civil appellate matters participated in by them in each of the following categories where applicable:
- ~~a.~~ Civil appeals in any appellate court in which briefs were filed or oral argument performed by applicant;
 - ~~b.~~ Extraordinary proceedings in an appellate court such as Petition for Writ of Mandamus or Habeas Corpus handled or defended by applicant.
- ~~3.~~(1): Certification applicants Applicant must have handled during their practice all or a substantial part of at least 12 civil appellate cases during the entire practice. A case that was submitted to one appellate court and then to a higher court will be considered only one case. The cases may include civil appeals in which applicant filed a brief or performed oral argument, and original proceedings filed by applicant in an appellate court (such as petition for writs of mandamus or habeas corpus) subject to the following additional requirements. ~~Of these number of civil appellate cases at least 6 shall have been handled in the 3 years immediately preceding application. In addition applicant must show the following:~~
- ~~(a-)~~ All 12 cases ~~were~~ must have been fully briefed on the merits at the appellate level;
 - ~~(b)~~ At least 6 cases of the 12 cases must have been handled by applicant during the 3 year immediately preceding application;
 - ~~b-(c)~~ Applicant ~~was~~ must have been lead counsel in at least 6 of the 12 cases;
 - ~~e-(d)~~ Applicant has ~~must have performed~~ presented oral argument to an appellate court on one significant issue of substantive or procedural law in at least ~~6-4~~ 6 of the 12 cases;
 - ~~d-(e)~~ At least 6 of the 12 cases must have involved an appeal from a final judgment ~~on the merits~~ or other dispositive order which included a finding on a substantive or procedural issue;
 - ~~e-(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
 - ~~f-(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.
- ~~4.~~(2) Service for an appellate court as a briefing attorney and/or

staff attorney for at least 5 years may be considered by the TBLS as the equivalent of the requirements set out in Section XII, B, 3, a-f(b)(1)(a-g) above. Service for less than 5 years may be considered proportionally.

(3) Exceptions. Applicant is expected to meet the tasks requirements listed in the Specific Area Requirements for Civil Appellate Law. However, TBLS may permit an applicant who does not meet the task requirements specified to substitute judicial experience or unusual or exceptional experience for one or more of the task requirements. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters the applicant has handled in civil appellate law. The experience shall at least be equivalent to the tasks requirements for civil appellate law and the determination of equivalency shall be in the sole discretion of TBLS.

C2. Substantial Involvement for Recertification.

~~1. Except as provided for in I,C,2 below, recertification applicants~~ Applicant must show substantial involvement and special competence in civil appellate law practice by providing such information as may be required by ~~the TBLS,~~ except as provided for in Section XII, B, 2, b of the Specific Area Requirements for Civil Appellate Law.

a. Percentage of Practice Requirement. including confirmation that during each year of the five years of certification they Applicant must have devoted a minimum of 25% of their his or her time practicing civil appellate law during each year of the 5 year period of certification as defined in Section XII, A of the Specific Area Requirements for Civil Appellate Law.

~~2. A certified attorney whose certification was extended by reason of service as a full-time judge (as detailed in Part I, Section VI,C,1,b) must satisfy all requirements for recertification except that, for initial recertification only, the substantial involvement requirement shall be waived.~~

b. Judicial Exception. TBLS may permit a board certified attorney or a recertification applicant who is serving as a full-time county, state or federal trial, appellate, probate, family, or bankruptcy judge (including a U.S. magistrate judge or Texas associate judge) to remain certified during his or her judicial service subject to the following conditions:

(1) A board certified attorney or recertification applicant who is affected by this provision shall continue to pay the annual fee.

(2) 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 full-time judge, he or she shall timely

complete the recertification process with TBLS and shall comply with the TBLS Rules. A board certified attorney whose certification was extended by reason of service as a full-time judge must satisfy all the requirements for recertification except that, for purposes of the initial recertification only, the substantial involvement requirement shall be waived and the CLE requirement shall be prorated based on the year in which the board certified attorney ceased judicial service.

C. CONTINUING LEGAL EDUCATION

1. Certification. Applicant must complete 60 hours of CLE in civil appellate law subjects within the 3 years immediately preceding application, through December 31 of the year of application.
2. Recertification. Applicant must complete 100 hours of CLE in civil appellate law subjects by December 31 of each 5th year of certification.

SECTION II REFERENCES

~~Applicants should refer to Section IV of the General Requirements before choosing references, and list the following references to attest to their competence in the practice of civil appellate law.~~

- ~~A. Three Texas attorneys who are familiar with applicant's civil appellate law practice.~~
- ~~B. One Texas attorney with whom or against whom applicant has tried a civil appellate law matter.~~
- ~~C. One judge of an appellate court in Texas before whom applicant has appeared as an advocate in a civil appellate law matter.~~

D. REFERENCES

1. Certification. Applicant shall submit peers with whom he or she has had dealings in the 3 years immediately preceding application.
2. Recertification. Applicant shall submit peers with whom he or she has had dealings since certification or the most recent recertification.
3. Reference Types. Applicant shall submit names and addresses of persons to be contacted as references to attest to his or her competence in civil appellate law. These persons shall be substantially involved in civil appellate law, and be familiar with applicant's civil appellate law practice. Applicant shall submit the following types of references:
 - a. Three Texas attorneys who are familiar with applicant's civil appellate law practice,

- b. One Texas attorney with or against whom applicant has prosecuted a civil appellate law matter, and
- c. One judge of an appellate court in Texas before whom applicant has appeared as an advocate in a civil appellate law matter.