

27 NCAC 01D .3005 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN APPELLATE PRACTICE

Each applicant for certification as a specialist in appellate practice shall meet the minimum standards set forth in Rule .1720 of this Subchapter. In addition, each applicant shall meet the following standards for certification in appellate practice:

(a) **Licensure and Practice.** An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) **Substantial Involvement.** An applicant shall affirm to the board that the applicant has experience through substantial involvement in appellate practice.

(1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 400 hours a year, and not less than 100 hours in any one year, to appellate practice. "Practice" shall mean substantive legal work done primarily for the purpose of providing legal advice or representation including activities described in Paragraph (2) below, or a practice equivalent as described in Paragraph (3) below.

(2) Substantive legal work in appellate practice includes, but is not limited to, the following: preparation of a record on appeal or joint appendix for filing in any state or federal appellate court; researching, drafting, or editing of a legal brief, motion, petition, or response for filing in any state or federal appellate court; participation in or preparation for oral argument before any state or federal appellate court; appellate mediation, either as the representative of a party or as a mediator, in any state or federal appellate court; consultation on issues of appellate practice including consultation with trial counsel for the purpose of preserving a record for appeal; service on a committee or commission whose principal focus is the study or revision of the rules of appellate procedure of the North Carolina or federal courts; authoring a treatise, text, law review article, or other scholarly work relating to appellate practice; teaching appellate advocacy at an ABA accredited law school; and coaching in appellate moot court programs.

(3) "Practice equivalent" shall include the following activities:

(A) Service as a trial judge for any North Carolina General Court of Justice, United States Bankruptcy Court, or United States District Court, including service as a magistrate judge, for one year or more may be substituted for one year of experience toward the five-year requirement set forth in Rule .3005(b)(1).

(B) Service as a full-time, compensated law clerk for any North Carolina or federal appellate court for one year or more may be substituted for one year of experience toward the five-year requirement set forth in Rule .3005(b)(1).

(C) Service as an appellate judge for any North Carolina or federal appellate court may be substituted for the equivalent years of experience toward the five-year requirement set forth in Rule .3005(b)(1) as long as the applicant's experience, before the applicant took the bench, included substantial involvement in appellate practice (as defined in Paragraph (b)(1)) for two years before the applicant's service as an appellate judge.

(4) An applicant must also demonstrate substantial involvement in appellate practice by providing information regarding the applicant's participation during his or her legal career in the following:

(A) Five oral arguments to any state or federal appellate court; and

(B) Principal authorship of 10 briefs submitted to any state or federal appellate court.

(c) **Continuing Legal Education.** An applicant must earn no fewer than 36 hours of accredited continuing legal education (CLE) credits in appellate practice and related fields during the three years preceding application, with no less than six credits to be earned in any one year. Of the 36 hours of CLE, at least 18 hours shall be in appellate practice, and the balance may be in the following related fields: trial advocacy; civil trial practice and procedure; criminal trial practice and procedure; evidence; legal writing; legal research; and mediation. An applicant may ask the specialty committee to recognize an additional field as related to appellate practice for the purpose of meeting the CLE standard. An applicant who uses authorship of a treatise, text, law review article, or other scholarly work relating to appellate practice or the teaching of appellate advocacy at an ABA-accredited law school to satisfy the substantial involvement requirement in Paragraph (b) of this Rule may not use the same experience to satisfy the CLE requirements of this Paragraph (c).

(d) **Peer Review.** An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of 10 lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to

each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law and must have significant legal or judicial experience in appellate practice. An applicant consents to confidential inquiry by the board or the specialty committee to the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant's place of employment at the time of the application.

(2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.

(e) Examination. An applicant must pass an examination designed to allow the applicant to demonstrate sufficient knowledge, skills, and proficiency in the field of appellate practice to justify the representation of special competence to the legal profession and the public. The examination shall be given annually and shall be administered and graded uniformly by the specialty committee. The exam shall include a written component which may be take-home and may include an oral argument before a moot court.

(1) Subject Matter – The examination shall cover the applicant's knowledge and application of the following:

(A) The North Carolina Rules of Appellate Procedure;

(B) North Carolina General Statutes relating to appeals;

(C) The Federal Rules of Appellate Procedure;

(D) Federal statutes relating to appeals;

(E) The Local Rules and Internal Operating Procedures of the United States Court of Appeals for the Fourth Circuit;

(F) The Rules of the United States Supreme Court;

(G) Brief writing;

(H) Oral argument; and

(I) Principles of appellate jurisdiction.

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court March 10, 2011;
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