

IN THE SUPREME COURT OF FLORIDA

67,784

THE FLORIDA BAR,

RE: Petition to Amend the
Bylaws Under the
Integration Rule of
The Florida Bar
(Florida Certification
Plan)

FILED

SID J. WHITE

OCT 18 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

pl

CASE NO

BRIEF OF THE FLORIDA BAR, PETITIONER

PATRICK G. EMMANUEL, President
The Florida Bar
Post Office Drawer 1271
Pensacola, Florida 32596

JOSEPH J. REITER,
President-Elect
The Florida Bar
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

STEPHEN A. RAPPENECKER, Chairman
Board of Certification, Designation
and Advertising
Post Office Box 566
Gainesville, Florida 33602

JOHN F. HARKNESS, JR.,
Executive Director
The Florida Bar
Tallahassee, Florida 32301

Table of Contents

Page

Table of Citations ii

Statement of Case and Facts 1

Point on Consideration 2-5

THE PROPOSED STANDARDS FOR CERTIFICATION
OF CRIMINAL LAWYERS SHOULD BE APPROVED
UNDER THE FLORIDA CERTIFICATION PLAN.

Conclusion6

Appendix A 7-15

TABLE OF CITATIONS

CASES

Page

The Florida Bar Re: Amendment to Integration Rule, (Certification Plan), 414 So.2d 490 (Fla. 1982) 1

The Florida Bar Re Amendment to Bylaws of Integration Rule (Certification Plan), 453 So.2d 25 (Fla. 1984) 1

The Florida Bar Re Petition to Amend the Bylaws Under the Integration Rule of The Florida Bar (Certification Plan), Case No. 66,173 (May 9, 1985) 1

RULES

Florida Bar Integration Rule,
article XXI, Section 2 3

Florida Bar Integration Rule Bylaws,
article XIX 6

STATEMENT OF THE CASE AND FACTS

The Florida Certification Plan was adopted by this Court on January 28, 1982 and became effective July 1, 1982. The Florida Bar Re: Amendment to Integration Rule (Certification Plan), 414 So.2d 490 (Fla. 1982). With its decision, this Court approved standards for certification of both Tax and Civil Trial Lawyers. Subsequently, Article XIX under the Integration Rule Bylaws was amended to provide for certification of lawyers in Marital and Family Law, The Florida Bar Re Amendment to Bylaws of Integration Rule (Certification Plan) 453 So.2d 25 (Fla. 1984) and Estate Planning and Probate, The Florida Bar Re Petition to Amend the Bylaws Under the Integration Rule of The Florida Bar (Certification Plan), Case No. 66,173, (May 9, 1985).

In 1980, the Executive Council of The Florida Bar Criminal Law Section appointed a Certification Committee to undertake the job of developing standards for certification of Criminal Lawyers. Since that time, and continuously, the committee and the Executive Council have engaged in vigorous study and debate on the issue.

In May, 1983, all of the approximate 1,500 members of the Criminal Law Section were polled by written ballots as to whether or not they desired Criminal Law Certification. The responses established that the members support Certification by a 3 to 1 ratio. The support and desire for certification of Criminal Lawyers, by the general membership of the section is overwhelming.

Numerous drafts, redrafts and proposals of standards for certification of Criminal Lawyers have been considered by the Criminal Law Section Executive Council and the Board of Certification, Designation and Advertising (BCDA). Final approval of the proposed standards was obtained from both the Executive Council and BCDA on April 26, 1985. These standards were unanimously approved by the Florida Bar Board of Governors on May 18, 1985. These proposed standards are appended to this brief as Appendix "A".

POINT I

THE PROPOSED STANDARDS FOR CERTIFICATION
OF CRIMINAL LAWYERS SHOULD BE APPROVED
UNDER THE FLORIDA CERTIFICATION PLAN.

Article XXI, Section 2, of the Integration Rule provides that the purpose of the Florida Certification Plan is to establish a formal program " . . . which allows members of The Florida Bar to inform the public concerning areas of law practice in which such members have become certified as having special knowledge, skills and proficiency . . . ". Nearly five years of serious study, debate, and consideration have resulted in the final proposal of Standards for Certification of Criminal Lawyers.

There is no area of law which undergoes more rapid changes as a result of State and Federal Court decisions than the area of criminal law. There is no area of law in which the consequences to the client are potentially more severe than in the area of criminal law. There is no other area of law which occupies more trial and appellate court time than does the practice of criminal law. Further, no other area of law occupies appellate court considerations as to the competency of the trial lawyer. Accordingly, the right of the public to be intelligently informed before employing counsel is more significant and critical in the area of criminal law than in any other area of practice.

Normally, when a member of the public is confronted with the difficult and emotional task of seeking a lawyer for a criminal offense, he or she does not have the luxury of time as might someone seeking tax advice or planning a lawsuit. Thus, the need to inform the public as to which lawyers have become certified as having special knowledge, skills and proficiency, is of paramount importance in the field of criminal law.

Appendix "A" of this brief sets forth the proposed Standards for Certification of Criminal Lawyers. Those sections of the proposed standards which may require special explanation and discussion are set forth below.

A major part of the Standards for Certification of a Criminal Lawyer which is distinguishable from those plans previously approved is the dual avenue for certification. A criminal lawyer may be board certified as either a "Criminal Trial Lawyer," or a "Criminal Appellate Lawyer". This is in recognition of the process unique to criminal practice of having the lawyer who handles the appeal frequently (if not most commonly) being different from the lawyer who handled the trial. Numerous public counsel and private practitioners are extremely and specially competent in the area of criminal law, but their experiences are limited to appeals processes. Many lawyers so situated have been involved as lead counsel in the handling of literally hundreds of appeals, but not trials. Likewise, there are a substantial number of lawyers who are specially competent in the field of criminal law, and who have handled literally hundreds of trials, but have never had the opportunity to handle appellate matters. Thus, the Executive Council of the Criminal Law Section, the BCDA and the Board of Governors have approved this plan providing for alternative methods of becoming Board Certified within the field of Criminal Law.

Section 1. provides the definitions of "criminal law", "practice of law," and establishes the makeup of the Certification Committee.

Section 2. contains the minimum standards for lawyers seeking Criminal Trial certification. The section sets forth what constitutes "substantial involvement" and the number of trials required to satisfy that requirement. A great deal of study and debate transpired concerning the trial requirement and it is believed the ratio proposed most effectively ensures special qualifications to entitle a trial lawyer to be Board Certified.

Section 2. further sets out the number of references required, the requirement that each applicant pass an examination, and the amount of approved continuing legal education to be accumulated during the three years preceding application. The only variance from previously approved Standards is with respect to the education credits required if an applicant should desire to be certified as both a criminal trial lawyer and criminal appellate lawyer. In that circumstance, the applicant will be required to have appropriate credits for each area of certification.

Section 3. provides for recertification. Essentially, a Board Certified Criminal Trial Lawyer seeking recertification must have continued to be substantially involved in the practice of law, devoting at least forty percent of his legal practice to the field of criminal law. In addition, fifty hours (one hundred hours for dual certification) continuing legal education is required.

Sections 4 and 5. set forth the standards for certification and recertification for Criminal Appellate lawyers. These standards are basically the same as those for criminal trial, with the exception of the substitution of twenty-five appellate actions in lieu of twenty-five trials. The education and reference requirements are the same as those set forth for the Criminal Trial Certification.

Since approval of the Florida Certification Plan there has been a general understanding that new areas would be gradually added to the program. Initially, and throughout the first two "cycles" (fiscal years 82-83 and 83-84), Civil Trial and Tax were the only two areas available. Marital and Family Law was introduced during the third "cycle" (fiscal year 84-85). We are now in the midst of the fourth "cycle" with Estate Planning and Probate as the fourth area of certification to be offered.

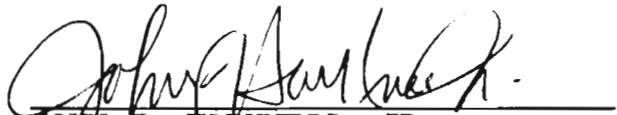
Because of the "lead time" necessary for establishment of any new area, the Criminal Law Certification Standards are being presented to this Court at this time for consideration and adoption.

It is the belief of The Florida Bar Board of Governors that Criminal Law Certification should be approved effective July 1, 1986, so that the certification department of The Florida Bar may begin accepting applications after that date for processing during the Bar's 1986-87 fiscal year.

CONCLUSION

For the reasons set forth in this brief, The Florida Bar Board of Governors respectfully requests this Court adopt the proposed Standards for Certification of Criminal Lawyers for inclusion as Appendix V under article XIX of the Integration Rule Bylaws.

Respectfully submitted,



JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
Tallahassee, Florida 32301-8226

STANDARDS FOR CERTIFICATION OF A
BOARD CERTIFIED CRIMINAL LAWYER

Lawyers who are members in good standing of The Florida Bar and who meet the standards prescribed below may be issued an appropriate certificate identifying the lawyer as either a Board Certified Criminal Trial Lawyer or a Board Certified Criminal Appellate Lawyer. An applicant may qualify for certification under both categories provided the applicant meets the Standards for each category. The purpose of the standards is to identify those lawyers who practice criminal law and have the special knowledge, skills, and proficiency to be properly identified to the public as Certified Criminal Trial or Appellate Lawyers.

Section 1. DEFINITIONS AND COMMITTEE

(a) "Criminal law" is the practice of law dealing with the defense and prosecution of misdemeanor and felony crimes in state and federal trial and appellate courts.

(b) The "practice of law" for this area is defined as set out at Section 5(c)(1) of article XIX of the Integration Rule Bylaws governing the Florida Certification Plan.

(c) The Criminal Law Certification Committee shall consist of one member with experience in the field of criminal appellate law and six members with experience in the field of criminal trial law.

APPENDIX A

Section 2. CRIMINAL TRIAL - MINIMUM STANDARDS

(a) Substantial Involvement. To become certified as a criminal trial lawyer, an applicant must demonstrate substantial involvement in criminal trial law. Substantial involvement shall include:

(1) At least five years of the actual practice of law of which at least 40% has been spent in active participation in criminal trial law. At least three years of this practice shall be immediately preceding application or, during those three years the applicant may have served as a judge of a court of general jurisdiction adjudicating criminal trial matters.

(2) The trial of a minimum of 25 criminal cases. Of these 25 cases, at least 20 shall have been jury trials and at least 15 shall have involved felony charges. On good cause shown, for satisfaction in part of the 25 criminal trials, the Criminal Law Certification Committee may consider involvement in protracted litigation.

(3) Within the three years immediately preceding application, the applicant's substantial involvement must be sufficient to demonstrate special competence as a criminal trial lawyer. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence and argument of jury or nonjury cases. For good cause shown, the Criminal Law Certification Committee may waive two of the three years substantial involvement for individuals who have served as judges of courts of general jurisdiction adjudicating criminal trial

matters. In no event may the year immediately preceding application be waived.

(b) References

(1) The applicant shall submit the names and addresses of at least four lawyers, not associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal trial practice. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least two judges before whom he has appeared on criminal trial matters within the last two years, or before whom he has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice.

(3) The Criminal Law Certification Committee may, at its option, send reference forms to other attorneys and judges.

(c) Education

(1) The applicant shall make satisfactory showing that within the three years immediately preceding application he has accumulated at least 30 hours of approved continuing legal education in the field of criminal law.

(2) Applicants seeking certification as both criminal trial and criminal appellate lawyers must, during the three years immediately preceding application, complete 30 hours of approved

continuing legal education as aforesaid for each category, for a total of 60 hours.

(d) Examination. Every applicant must pass an examination designed to demonstrate sufficient knowledge, proficiency and experience in criminal law, application of constitutional principles, and rules of criminal procedure to justify the representation of special competence to the legal profession and public.

Section 3. CRIMINAL TRIAL RECERTIFICATION Recertification shall be pursuant to the following standards:

(a) The applicant shall demonstrate continuous and substantial involvement in the practice of law, of which at least 40% must have been spent in active participation in criminal trial law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in 2(a)(3).

(b) The applicant shall make a satisfactory showing that he has accumulated at least 50 hours of approved continuing legal education during the period since original certification. Applicants seeking recertification as both criminal trial lawyers and criminal appellate lawyers must complete at least 50 hours of approved continuing legal education in each of the categories, for a total of 100 hours.

(c) The applicant shall submit the names and addresses of at least four lawyers, not associates or partners, as references, to attest to the applicant's substantial involvement and competence in criminal trial practice. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(d) The applicant shall submit the names and addresses of at least two judges before whom he has appeared on criminal trial matters within the last two years, or before whom he has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice.

(e) The Criminal Law Certification Committee may, at its option, send reference forms to other attorneys and judges.

Section 4. CRIMINAL APPELLATE - MINIMUM STANDARDS

(a) Substantial Involvement. To become certified as a criminal appellate lawyer, an applicant must demonstrate substantial involvement in criminal appellate law. Substantial involvement shall include:

(1) At least five years of the actual practice of law of which at least 40% has been spent in active participation in criminal appellate law. At least three years of this practice shall be immediately preceding application or, during those three years, the applicant may have served as an appellate court judge

adjudicating criminal matters. The five years of criminal appellate practice shall include brief writing, motion practice and oral arguments, and extraordinary writs, sufficient to demonstrate special competence as a criminal appellate lawyer.

(2) The representation of at least 25 appellate actions. On good cause shown, for satisfaction in part of the 25 appellate actions, the Criminal Law Certification Committee may consider involvement in protracted litigation.

(3) Within the three years immediately preceding application, the applicant's substantial involvement must be sufficient to demonstrate special competence as a criminal appellate lawyer. Substantial involvement includes brief writing, motion practice and oral arguments, and extraordinary writs. For good cause shown, the Criminal Law Certification Committee may waive two of the three years substantial involvement for individuals who have served as appellate court judges adjudicating criminal matters. In no event may the year immediately preceding application be waived.

(b) References

(1) The applicant shall submit the names and addresses of at least four lawyers, not associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal appellate practice. Such lawyers shall be substantially involved in criminal appellate law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least two judges before whom he has appeared on criminal appellate matters within the last two years, to attest to the applicant's substantial involvement and competence in criminal appellate practice.

(3) The Criminal Law Certification Committee may, at its option, send reference forms to other attorneys and judges.

(c) Education

(1) The applicant shall make satisfactory showing that within the three years immediately preceding application he has accumulated at least 30 hours of approved continuing legal education in the field of criminal law.

(2) Applicants seeking certification as both criminal trial and criminal appellate lawyers must, during the three years immediately preceding application, complete 30 hours of approved continuing legal education as aforesaid for each category, for a total of 60 hours.

(d) Examination. Every applicant must pass an examination designed to demonstrate sufficient knowledge, proficiency and experience in criminal law, application of constitutional principles, and rules of criminal and appellate procedure to justify the representation of special competence to the legal profession and public.

Section 5. CRIMINAL APPELLATE RECERTIFICATION Recertification shall be pursuant to the following standards:

(a) The applicant shall demonstrate continuous and substantial involvement in the practice of law, of which at least 40% must have been spent in active participation in criminal appellate law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in 4(a)(3).

(b) The applicant shall make a satisfactory showing that he has accumulated at least 50 hours of approved continuing legal education during the period since original certification. Applicants seeking recertification as both criminal trial lawyers and criminal appellate lawyers must complete at least 50 hours of approved continuing legal education in each of the categories, for a total of 100 hours.

(c) The applicant shall submit the names and addresses of at least four lawyers, not associates or partners, as references, to attest to the applicant's substantial involvement and competence in criminal appellate practice. Such lawyers shall be substantially involved in criminal appellate law and familiar with the applicant's practice.

(d) The applicant shall submit the names and addresses of at least two judges before whom he has appeared on criminal appellate matters within the last two years, to attest to the applicant's

substantial involvement and competence in criminal appellate practice.

(e) The Criminal Law Certification Committee may, at its option, send reference forms to other attorneys and judges.