



GUIDE TO APPLYING FOR CAPITAL CERTIFICATION

The following Guide is designed to answer some frequently asked questions about the process of applying for capital certification and to take applicants through the application form, highlighting particular areas in each section of the form.

Frequently Asked Questions

Why is there a new application for capital certification?

Pursuant to Act 307, the Louisiana Public Defender Board was created with an obligation, *inter alia*, to create mandatory qualification standards for attorneys providing legal services to indigent persons, including specific standards for capital defenders. Pursuant to the Act, the Board promulgated capital certification standards that have passed into law as a part of the Capital Defense Guidelines, found in the Louisiana Administrative Code, 22:XV(Chapter 9), §915.

Are these new certification standards different from the old standards?

The new certification standards are very different from the old standards. The old standards were based almost entirely on quantitative measures – how many years of experience and the types of cases in which counsel served. The new standards include some quantitative measures but also include qualitative measures – requirements that aim to ensure that all certified counsel have the requisite skills and resources to provide high quality capital defense commensurate with their level of certification.

Who needs to submit an application for certification?

Everyone who is currently providing legal services to indigent persons in a capital case, whether pre-indictment, pre-trial, on direct appeal or in state post-conviction, must submit an application. Anyone who hopes to be assigned a capital case in the future must also apply as capital cases may only be assigned to certified counsel.

If I was certified under the old system do I need to fill out an application?

If you were capitally certified under the old system you must still fill in a new application. Under the Capital Defense Guidelines you are deemed to be certified under the new system as long as you timely submit a new application. If you fail to submit a new application you will be decertified, you will not be eligible for any future capital appointments and the state public defender will be obliged to notify each court in which you are acting for a capital defendant of your decertification.

Where can I get the application form?

The application form is available at the website of the Louisiana Public Defender Board: <http://www.lpdb.la.gov/> or by emailing Karen Rayborn: krayborn@lpdb.la.gov.

How do I fill in the application - can I do it by hand?

Applications must be typewritten. Handwritten applications will not be accepted. You may type your answers directly into the spaces provided in the application – the boxes should expand to allow you to use as much space as you need. You may also print out the application and type in your answers in the appropriate places. Where the space is inadequate you should attach further pages. Specific guidance on completing each section of the application is included below.

How do I submit my application?

Applications should be completed, printed and signed where appropriate. They should then be mailed with all necessary attachments to:

Karen Rayborn
Paralegal
Louisiana Public Defender Board
500 Laurel Street, Ste. 300
Baton Rouge, LA 70801

The application will not be considered complete if there is information missing. Where attorneys cannot provide a particular document or piece of information, they should provide reasons for the omission. Incomplete applications will be returned to the attorney before they are reviewed.

When are applications due by?

Applications should be submitted to Karen Rayborn by December 15, 2010. If more time is required, the applicant should email or fax Karen Rayborn advising of his or her

intention to apply for certification and of the need for more time. Where a request for additional time is made, applicants will have until December 31, 2010 to submit the application.

What if I have questions?

Anyone with questions about the application process should contact Karen Rayborn at: krayborn@lpdb.la.gov.

Guidance on each section of the application

The application form is divided into eight sections and each section must be completed.

I. Certification sought

Only one application form should be submitted, even where counsel is seeking certification in more than one area of capital defense. In this section attorneys should indicate by checking the boxes of all categories for which they seek certification. If the applicant seeks certification as lead attorney it is not necessary to also check the associate attorney box.

II. Applicant information

The purpose of the first section is to provide basic identifying and contact information for the attorney. Question #11 will help to identify attorneys who were previously capitally certified in Louisiana. Attorneys should provide the level of certification they had or have and the approximate dates from which they were certified at each level.

Attorneys must sign the first page of the application, certifying that the contents of the application are true and correct and contain no material omissions.

III. Demonstration of relevant experience and skills

The purpose of this section is to provide detailed information regarding the attorney's experience, skills, knowledge. The information required comes from Louisiana Administrative Code, 22:XV(Chapter 9), §915.C.3. In this section, attorneys should provide as many details as possible regarding each of the items, and attach all required documentation. Pursuant to §915.C.4, if an attorney is unable to supply one or more of the items required in this section, the attorney should provide an explanation on the application and the state public defender may waive the requirement or require other material to be supplied in lieu of the required information.

a) List of capital cases in which you have served as defense counsel (§915.C.3.a)

Attorneys should list every capital case where they have served as defense counsel. For some applicants it may not be possible to remember every capital case or remember all of the details of each case. In these circumstances, the applicant may list those cases and that information which is reasonably available and note the extent of the information not included and the reason for the omission.

Applicants should be at pains to ensure that the listed cases provide an adequate basis for a determination that the applicant has the relevant skills and experience for the

certification sought. Further, applicants should ensure that service as counsel in any cases that may reflect negatively upon the applicant's skill or experiences is not omitted. Failure to make frank disclosure of the negatives as well as the positives will count against an applicant and may result in a denial of certification.

Tables have been supplied for applicants to provide information for all capital cases on which they have served as defense counsel, including the name of the defendant, judicial district court, trial judge, prosecuting attorneys, co-counsel, the result or verdict and any reported appellate decisions in the case. Attorneys should identify the role they played on a particular case (lead, associate, other) and any other relevant information.

Attorneys should include cases from other states as well as federal cases, using the column for JDC to indicate the court, city and state. If more space is needed, attorneys should cut and paste more tables as necessary, or may copy the page and provide the additional page(s) as an attachment.

b) List of other experiences establishing qualifications (§915.C.3.b)

Attorneys should use this section of the form to provide any other information that might help explain why an attorney has the skills, knowledge and experience necessary for capital certification. Attorneys may have acquired capital defense skills, knowledge and experience in ways other than direct representation of a defendant in a capital case and this is the attorney's opportunity to explain this background.

The new standards specifically emphasize the existence of relevant skills and proficiencies above simple quantitative measures of experience as well as respecting the value of many areas of non-capital experience. Applicants should take the opportunity to detail the range of experiences that they bring to capital work.

c) List of judge or capital defense attorney references (§915.C.3.d)

In the tables provided attorneys should list names and phone numbers of two judges or capital defense attorneys who know their work and will be able to evaluate them on issues relevant to this application, ie. the skills, knowledge and experience necessary to perform high quality representation in a capital case. The references should have had adequate opportunity to observe the attorney in a professional context. In the space provided attorneys should describe each reference's familiarity with the attorney.

d) Description of current caseload (§915.C.3.h)

This section requires attorneys to detail their current caseload including all active cases and cases that may become active in the next year. Attorneys should list the kinds of cases they have (ex. criminal/civil, felony/misdemeanor, etc.) and the approximate number of cases they have in each category. Attorneys should specify what stages the cases are in and the complexity of the cases, or otherwise indicate the approximate amount of work they require. Cases should be counted whether they are pro bono, indigent, or private clients.

e) List of other relevant background or specializations (§915.C.3.i)

This section should be used by the attorneys to indicate any skills, knowledge or experiences they have that might be relevant to a capital case. For example, if attorneys speak foreign languages or have advanced degrees in forensics or mental health, such skills should be listed here.

f) Information relating to professional, physical and mental fitness
(§915.C.3.k)

Attorneys should provide information regarding any and all findings of professional misconduct including any disciplinary action or judicial contempt orders, from any jurisdiction. Applicants must disclose any pending complaints or actions. Attorneys may use the space to explain such matters and should provide as an attachment any relevant actions, orders or other documentation.

Attorneys should also use this section to disclose any physical or mental health issues that may impair the attorney's capacity to perform high quality legal representation in capital cases. Again, attachments should be provided where appropriate. Any other relevant issues that could impair the attorney's ability to perform should be included in this section.

IV. STATEMENT OF RELEVANT PROFICIENCIES

As required by §915.C.3.e , applicants should attach a written statement describing the extent and source of relevant proficiencies in each of the categories from §915.B.1.b as listed below

- i. substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
- ii. skill in the management and conduct of complex negotiations and litigation;
- iii. skill in legal research, analysis, and the drafting of litigation documents;
- iv. skill in oral advocacy;
- v. skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
- vi. skill in the investigation, preparation, and presentation of evidence bearing upon mental status, including mental retardation;
- vii. skill in the investigation, preparation, and presentation of mitigating evidence;
- viii. skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and
- ix. skill in maintaining a strong working relationship with a capital defendant.

Applicants should be sure to address all nine areas, describing where they obtained experience in each area as well as evaluating their levels of ability in each area. This is each applicants' opportunity to highlight how and why they have the relevant proficiencies for capital defense work and the application should be detailed and specific, rather than relying simply on generalizations or a numerical tally of cases.

V. MINIMUM EXPERIENCE REQUIREMENTS FOR CERTIFICATION

This section allows applicants to provide information demonstrating their qualifications for the levels and stages of certification they are seeking to obtain. These minimum qualifications can be found in the Capital Defense Guidelines at Louisiana Administrative Code, 22:XV(Chapter 9), §915.D.

Applicant's need only fill out the pages relating to the certification for which they are applying.

Where an attorney's experience is less than that listed in the minimum requirements, the attorney may list equivalent alternative experience, pursuant to §915.D.1.g. The new standards make specific provision for the waiver of the formal experience requirements in favor of relevant skills and experience

VI. AUTHORIZATION FOR ACCESS TO CLE & DISCIPLINARY RECORDS

As a part of the application and certification process, applicants must authorize access to their CLE and disciplinary records. Attorneys must provide their full name, bar number and date of birth, and sign and date this page. See §915.C.3.f.

VII. CONTINUING OBLIGATIONS OF CERTIFIED COUNSEL

Pursuant to §915.C.3.g, attorneys must sign and date this page certifying a commitment to compliance with the ongoing obligations of certified counsel listed in §915.I and to the ongoing continuing legal education requirements relevant to maintaining capital certification. §923. Applicants should carefully review the list of continuing obligations before signing the undertaking.

VIII. ATTACHMENTS

This final section provides a checklist of the attachments that must be included with the application and the opportunity to list any additional attachments that have been provided.

a) Legal writing samples (§915.C.3.c)

Attorneys must attach two (2) samples of substantial legal writing that include an analysis of complex legal issues, preferably filed in a capital case. Boilerplate motions will not be adequate. The samples may have been prepared by the attorney at the trial, appellate or post-conviction level.

Writing samples must be applicant's sole writing or if the writing sample was substantially authored by the applicant it must include a statement describing the extent

of the applicant's authorship and a clear acknowledgement of any other person's authorship of any drafts, sections of the document or responsibility for editing of the document. Writing samples that are not substantially authored by the applicant should not be submitted.

On the attachments checklist counsel should provide the titles of the writing samples attached.

b) License or permission to practice in Louisiana (§915.C.3.j)

All Louisiana attorneys should attach a current Certificate of Good Standing. Certificates of good standing may be obtained through the LSBA by contacting:

Kim M. Lane - LSBA Member Records Coordinator

Phone: (504)619-0125

Toll Free: (800)421-5722, ext. 125

Fax: (504)910-3033

If an out-of-state attorney is seeking certification, the attorney should attach a Certificate of Good Standing from the state where the attorney holds a license to practice law, as well as the court order providing the attorney with permission to practice *pro hac vice*.

c) Additional Attachments

Applicants should add to this list all other attachments provided as supplements to questions. The attachments should appear at the end of the application in the order they are listed in this section and should be properly labeled for easy identification.