

Criminal Law

by Michael J. Neimand

As a certified criminal appellate lawyer since 1993 and a member of the Criminal Law Certification Committee since 1996, I have been consistently asked about certification — the process, and the reasons to become certified. The purpose of this article is to dispel the confusion criminal lawyers have with certification and to encourage those of you who have the qualifications to apply.

In 1986, the court unanimously approved certification for criminal trial and criminal appellate law.¹ The minimum standards for criminal trial law included five years law practice, of which 40 percent had been spent in active criminal trial law; a minimum of 25 criminal trials, 20 of which were jury trials and 15 involving felonies; references from four lawyers and two judges; a minimum of 30 hours of continuing legal education in criminal law; and passing an exam.² The minimum standards for criminal appellate law included five years law practice, of which 40 percent had been spent in active criminal appellate law; a minimum of 25 appellate actions; references from four lawyers and two judges; a minimum of 30 hours of continuing legal education in criminal law; and passing an exam.³

By 1989, Criminal Law Certification was well on its way, so much so that designation in criminal law was abolished.⁴ At that time 189 attorneys were designated in criminal law; 87 in criminal trial law and five in criminal appellate law. Today criminal law is the third largest certification area with 377 attorneys certified; 319 in criminal trial law and 58 in criminal appellate law.

Although being third out of 19 certification areas is an achievement, considering the size of the criminal bar we can and must increase our numbers. Many criminal lawyers have found the process daunting. I will attempt to ease those trepidations.

The first step in becoming certified in criminal law is yours. Once you have filed your application, the Criminal Law Certification Committee evaluates your qualifications under the standards set by the Supreme Court.

The process of evaluating each applicant is time-consuming and recommendations are usually ready for final consideration by the BLSE in March. Initially, each application is reviewed to determine if the applicant meets the minimum standards. The committee then reviews the peer references, an essential element of the program because the committee is charged with recommending applicants who are highly competent and who also demonstrate character, ethics, and professionalism. In past years, the committee received peer review responses, especially from the bench, stating that the applicant was

unknown. To alleviate this problem, all applicants now provide a photograph to be sent with the peer review forms. It is extremely important for peer reviewers to respond in a timely manner and the committee works diligently to complete the certification review expeditiously.

The committee spends most of the remaining time preparing and grading the examination. Recently, the committee focused on restructuring the format of the exam and, as a result, believes it now more accurately tests both criminal trial and criminal appellate skills.

The first part of the test is the essay section, which is given to both the criminal trial and criminal appellate applicants. The topics are broad-based, dealing with the application of the federal constitution, evidentiary issues, state law issues, and federal law issues. The test is designed to favor neither the state nor the federal practitioner. An applicant who has a broad knowledge of criminal law usually does well on the essay section. The second part is drafted specifically for either criminal trial or criminal appellate applicants and consists of multiple-choice questions testing application of either the rules of criminal procedure or appellate procedure to specific situations. The section also consists of a practical question which is designed to test ability to address an actual situation.

After the exam, the committee spends a long and rigorous day or two grading. The “holistic” grading method is utilized to grade the essays. Each essay question is read to determine “range finders”—essay answers that best typify an answer for a particular score. The scores range from a low of one to a high of six. The “range finders” are then used by individual grading teams to grade and assign scores. Each group of two “readers/ graders” grades one of the five essay questions. Each reader separately determines a score and if there is a difference of opinion, a third reader grades the essay and a final decision on the score is reached.

At the final meeting of the year, the passing level for the examination is determined and the recommendations as to certification are forwarded to the BLSE. Applicants are then notified of the results. Throughout the grading process, all examinees are identified by exam number to maintain confidentiality. The committee depends upon staff to guard the identity of each examinee until the passing score is determined.

Why should you bother to become certified? The most common arguments the author has heard against certification are that it is costly and time consuming, and the benefits and increased business are not substantial. Government lawyers may believe the only thing certification does for them is attach a stigma if they fail the examination.

Counterbalancing these reasons for not becoming certified are the many positive comments from certified lawyers. Many lawyers became certified as a way to distinguish themselves from their peers and they feel that certification is a valuable tool to make such a distinction because it is achieved by meeting objective standards and not by popularity. Others are drawn to certification because it encourages them to stay on the cutting edge of the field and maintain competence. A number of certified criminal trial lawyers have

said that certification has brought referrals from other lawyers and clients who saw the lawyer's advertisement indicating board certification. For government lawyers, certification is sought for professional pride and to provide the people of Florida with the best representation.

As a certified criminal appellate lawyer for the past nine years and a member of the Criminal Law Certification Committee for the past six and a half years, I admire those who came before me and made certification in my field a reality and those who achieved certification during my tenure on the committee. I know that each lawyer certified in criminal law is a highly competent and ethical lawyer, who is well respected by his or her peers. If you are a lawyer specializing in criminal trial or appellate law, the best way to confirm and announce your abilities, accomplishments, ethics, and commitment to excellence is board certification.

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1. The Fla. Bar re Amendment to the Bylaws under the Integration Rule (Florida Certification Plan), 487 So. 2d 19 (Fla 1986).
 2. Id. at 20.
 3. Id. at 21–22.
 4. The Fla. Bar re Amendment to Rules Regulating the Fla. Bar Chapter 6 (Legal Specialization and Education), 584 So. 2d 112 (Fla. 1989).
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Michael J. Neimand is a member of the Criminal Law Certification Committee and served as chair from 2000—02. He has been board certified since 1993.