

THE RE-CERTIFICATION PLAN
Assigned Counsel Plan, First Department 2010-11

In order to ensure that the state “has met its foundational obligation under Gideon”¹ to provide meaningful legal representation to indigent defendants, Hurrell-Harring v. State of New York, 2010 N.Y. Slip Opinion 03798 (May 6, 2010) (Lippman, C.J.), the Appellate Division, First Department, has directed the Central Screening Committee of the Assigned Counsel Plan to re-certify attorneys who have served on the 18-B panels for more than five years.²

To qualify for re-certification, each attorney must demonstrate that s/he has a record of providing good-quality legal representation to an indigent defendant at every phase of a criminal proceeding. In order to determine whether an applicant for re-certification has exhibited the skills essential to effective advocacy, Re-Certification Teams made up of Central Screening Committee members will review each applicant’s work by evaluating his/her performance in the following stages:

- Pre-trial release advocacy
- Motion practice
- Negotiations/plea bargaining/developing alternative dispositions
- Preparation:
 - Investigation

¹Gideon v. Wainwright, 372 U.S. 335 (1963)

² Excluding those attorneys who have served for more than five years, but who have been elevated to a more advanced panel through the screening process within the last five years.

- Client Consultation
- Expert Consultation
- Mastery of Discovery Materials
- Identification of Legal Issues

- Trial skills from voir dire through summation (including protecting the record)
- Legal writing skills
- Sentencing Advocacy

In assessing an attorney's suitability for re-certification, the skills displayed during all of the foregoing phases of representation should be considered, and no one of the above will necessarily be controlling.

RE-CERTIFICATION TEAM EVALUATION PROCESS

The 2010-11 re-certification process shall be conducted by teams made up of members of the Central Screening Committee of the Assigned Counsel Plan of the Appellate Division, First Department. Following an initial process of review and recommendation, each application shall be referred to the Re-Certification Review Committee, pursuant to the process set forth below.

I.

Each evaluation team shall be headed by a Team Leader, who will assign applications for re-certification to individual team members. Each designated team member shall conduct and complete an appropriate review of each applicant assigned to him/her. The evaluation process shall be initiated by a thorough examination of the application for re-certification, including all required written materials. The examiner shall also conduct an interview of each applicant, and contact such third parties, including judges, attorneys and clients, as deemed necessary. The examiner may also require the applicant to submit further written materials.

If the initial examiner concludes that the applicant is duly qualified for re-certification, the examiner will forward that file to the Team Leader, recommending re-certification. If, upon review of that file, the Team Leader concurs in the recommendation to re-certify, s/he shall forward the file to the Chair of the Re-Certification Review Committee (hereinafter “Chair”). Except in the case of extraordinary circumstances which would compel the Chair to require the Team to conduct further investigation, the Chair shall approve the applicant for re-certification.

II.

If, however, the initial examiner finds that the applicant is not qualified for re-certification, s/he shall so notify the Team Leader. If, after reviewing the matter, the Team Leader agrees that the applicant is not qualified, s/he will forward that recommendation to the Chair. In the event that the initial examiner and the Team Leader share substantial doubts about whether or not an applicant is suitable for re-certification, or if they cannot agree on a recommendation, two or more additional members of the Team shall be summoned to consider that application. Any member of the Team may call for an additional interview of the applicant, or request additional materials and references. If, after due consideration, a majority of the Team reaches a determination to deny re-certification, the Team Leader shall so inform the Chair.

III.

The Chair and at least two other members of the Re-Certification Review Committee shall evaluate every recommendation to deny re-certification. Upon the request of any member of the Re-Certification Review Committee, further investigation may be conducted, and the applicant shall be afforded an opportunity to appear before this review board to defend his/her application. Thereafter, the question of re-certification shall be determined by a majority vote of the Re-Certification Review Committee. The Re-Certification Review Committee may consider alternatives short of outright rejection of re-certification, where appropriate.

IV.

No attorney shall be denied re-certification unless the application has been reviewed by at least five attorneys, the majority of whom recommend against re-certification. Any attorney who has been denied re-certification shall have the right to appeal that decision to the Presiding Justice of the Appellate Division, First Department.

THE STANDARDS TO BE APPLIED BY THE TEAMS

In conducting the re-certification process, our evaluation Teams will assess the applicants' qualifications by applying the standards which have been set forth by the American Bar Association. These standards are widely recognized and well-known in the profession. In Legal Education and Professional Development – An Education Continuum, the A.B.A.'s Section of Legal Education and Admissions to the Bar identified the following qualities and skills as essential to the practice of law:

- Problem Solving
- Legal Analysis and Reasoning
- Legal Research
- Factual Investigation
- Communication
- Counseling
- Negotiation
- Litigation
- Alternative Dispute-Resolution Procedures
- Organization and Management of Legal Work
- Recognizing and Dealing With Ethical Dilemmas.

Because all attorneys who serve on the Assigned Counsel Plan panels must provide effective court-appointed representation to indigent defendants who are accused of crimes, the Re-certification Teams will determine whether:

1. The applicant's work demonstrates knowledge of clients' personal circumstances, as well as the facts surrounding their cases.
2. The applicant uses investigators and/or other expert services whenever appropriate, including in cases where pleas were taken, as well as in cases that proceeded to trial.
3. The applicant has submitted non-pro forma motions and/or memoranda of law which were adequately researched and drafted.
4. The applicant is able to articulate the factual and tactical reasons for adopting the defense strategy utilized in any case under discussion during the interview process.
5. The applicant devotes the proper amount of preparation time to a given case, particularly in proportion to the time spent in court.
6. The applicant, in written submissions and during the interview process, demonstrates knowledge of:
 - A) The rules of evidence;
 - B) Preservation of a record for appeal;
 - C) Procedural issues;
 - D) Locating and utilizing special expertise;
 - E) The collateral consequences of actions taken.
7. The applicant is skilled at seeking out measures to reduce the severity of punishment, including carefully-crafted plea negotiations, meaningful pre-sentence memoranda, and diversion from prosecution.

8. The applicant has demonstrated effective courtroom advocacy skills through direct questioning, cross-examination, arguing matters of law to the court, and giving a coherent presentation to the jury, consistent with the theory of the case.
9. The applicant has knowledge of, and adheres to, the ethical standards of the profession.
10. The applicant has demonstrated the appropriate caseload control that is required in order to afford effective representation to each individual defendant.