

NOTICE TO THE BAR

PUBLICATION FOR COMMENT

REPORT OF THE BOARD ON ATTORNEY CERTIFICATION ON MUNICIPAL COURT LAW CERTIFICATION

The Supreme Court is seeking comment on the Report of the Board on Attorney Certification regarding certification in the area of Municipal Court Law. The Report is published with this notice and includes the proposed amendments to Rule 1:39-1 et seq. and the Board's proposed regulations in respect of this new area of specialty certification.

Those wishing to comment on the Report, the proposed rule amendment, or the proposed regulations must do so by December 15, 2010, in writing to the following address:

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Acting Administrative Director of the Courts
Rules Comments (re: Municipal Court Law Certification)
Hughes Justice Complex; P.O. Box 037
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Comments also may be e-mailed to Comments.Mailbox@judiciary.state.nj.us.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). The identity of those commenting and the substance of those comments may be subject to public disclosure.

/s/ Glenn A. Grant

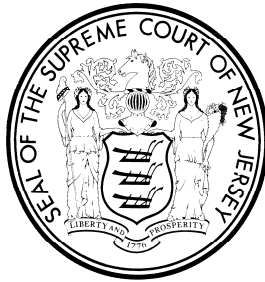
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Acting Administrative Director of the Courts

Dated: October 12, 2010

Report to the Court

Municipal Court Law

New Jersey Supreme Court
Board on Attorney Certification



June 30, 2010

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SUPREME COURT:

The Board on Attorney Certification respectfully submits this report recommending the Court's approval of certain proposed amendments to the Regulations of the Board on Attorney Certification (Board) and corresponding amendments to Rule 1:39 et seq. These amendments relate to the Board's suggestion that the Court grant expansion of the certification program into the area of municipal court law. In addition, there are some housekeeping and minor substantive amendments that relate to specific requirements of the existing areas of certification that have already been instituted in practice. Finally, there are recommended amendments associated with any conflicts or inconsistencies with the Board's Regulations or Rule 1:39 created by the recent inception of the mandatory continuing legal education program and that program's governing regulations and Rule 1:42. The Board concluded that seeking the Court's approval of these housekeeping amendments within this report, rather than submitting a separate report, makes the most sense and will eliminate any possible confusion.

PART I. INTRODUCTION

Based on a formal request by the State Bar Association, the Court in early 2009 asked that the Board on Attorney Certification study the issue of whether municipal court practice is an area of law ripe for addition as a specialty field under New Jersey's certification program. If the Board concluded that municipal court practice was an area of practice warranting an expansion of the certification program, the Board was tasked to recommend proposed standards and corresponding amendments to Rule 1:39 and the Board's Regulations.

In support of any recommendation that the Court approve expansion of the certification program into the area of law designated as municipal court practice, the Board notes that most New Jersey residents will never have the opportunity to experience a Superior Court courtroom, either as a litigant or a juror. Rather, municipal court may very well be the only contact a New Jersey resident will have with the New Jersey system of civil and criminal justice during his or her lifetime. In State v. Storm, 141 NJ 245, 254 (1995), the Court referred to the municipal court as "the people's court." In Storm, the Court quoted Arthur T. Vanderbilt as stating that municipal courts bear "the primary responsibility for the maintenance of peace in the various communities of the State, for safety on our streets and highways, and most important of all, for the development of respect for law on the part of our citizenry." *id.* at 251. Further, in In re Mattera, 34 N.J. 259, 275 (1961), this Court observed:

In many respects the municipal court is the most important in our judicial system. No other court can match its volume of causes. Our municipal courts dispose annually of...a number [of matters] which dwarfs the total proceedings in all other courts of the State. For all practical purposes, the judgments of the municipal court are final. It is there

that most citizens have their sole exposure to the judicial process. The respect they have for the judiciary hinges upon that experience.

The Board has been and continues to be of the view that expansion of certification into other areas of law would: 1) assist the public in becoming more knowledgeable in selecting an attorney capable and qualified to handle a legal matter or dispute; 2) increase the quality of advocacy and education in New Jersey; and 3) improve the delivery of legal services to the public. While certification would be warranted in many areas of law, municipal court practice fits well within the existing framework of New Jersey's certification program. Moreover, the current specialty areas were chosen as ones that offered the more likely potential for exposure to the public at large. Practice in these fields of law, including municipal court practice, present the greatest likelihood that a considerable number of the litigants are unsophisticated legal consumers.

The attorney certification program certified its first group of New Jersey attorneys in 1981. The program has continued to be quite successful, maintaining about an eighty to eighty-five percent recertification rate. Nonetheless, in recent years, growth has been rather stagnant, mirroring the conditions of certification programs nationwide. This stagnation corresponds to the downward spiral in the economy as well as the current practice limitations of the specialties themselves, especially litigation specialties. The only specialty programs, both national and state, that have demonstrated a significant spike in growth are those that have continued to expand into additional fields of law.

Board certification of attorneys was conceived as a result of the United States Supreme Court opinion in Bates v. State Board of Arizona, 433 U.S. 350 (1977). In Bates, lawyers for the first time were permitted to advertise their services to the public. Although many attorneys advertise, it is well settled that there is no correlation between the size and effectiveness of an advertisement for legal services and the level of competency or experience of the attorney who may advertise. Certification was created in an effort to protect the public from misleading or uninformative legal advertising without infringing on an attorney's first amendment right to advertise his or her legal services to the consuming public.

In order for legal specialization to be a most effective service to the legal consumer, the public must be informed of the existence and importance of specialty certification. As opposed to most other forms of legal advertising that primarily rely on the attorney's own description of his or her legal knowledge and experience, specialty certification requires that an attorney meet substantive requirements that demonstrate a sufficient level of competence in the field of law, positive peer references, legal education, and the successful completion of testing in the specialty. It is the Board's view that as the number of specialty designations increases, it is more likely than not that the public will come to know, refer to, and rely on certification programs in selecting a lawyer. Moreover, certification programs continue to expand throughout the country; both in the various states and through national certification programs accredited by the American Bar Association.. There also are certification programs in Canada and New Zealand. It makes most sense that municipal court law, which has the greatest potential for connection with the unwary and unsophisticated legal consumer, would

be the most advantageous choice to add as a new specialty designation to the Court's certification program.

It goes without saying that one of the primary goals of lawyer certification/specialization programs is to inform the public, as well as other attorneys, which lawyers are capable and qualified in specific areas of legal practice. It cannot be disputed that the practice of law continues to become more and more complex and specialized. *De facto* specialization continues to exist and attorneys, by necessity, develop greater skills in the area in which they predominantly practice. Because of this *de facto* specialization, many attorneys only have minimal threshold skills in areas in which they do little or no work. While it is true that large businesses, corporations, institutional clients, and the affluent consumer have little difficulty in finding skilled legal representation, the vast majority of consumers, especially those whose matters might be venued in the municipal court, have limited means available to ascertain those attorneys who are competent and qualified to handle their case. In addition, the solicitation of services by attorneys to unsophisticated and potentially unwary litigants is permitted in the municipal court, especially in response to copious number of traffic tickets issued. Those consumers need some protection from misleading advertising and a viable barometer to measure legal skill, professional responsibility, and qualifications. Certification in the field of municipal court law will assist in accomplishing those vital tasks.

PART II. PROPOSED STANDARDS RELATED TO MUNICIPAL COURT CERTIFICATION

Before tackling the standards, the Board recommends that the specialty be named "municipal court law" in an effort to remain consistent with the current labeling of the certification specialties. In addition, the proposed regulations relating to municipal court law certification will follow the existing format and framework of the four areas of specialty certification in New Jersey.

Proposed Regulation 203:4, Professional Experience, conveys the suggested "meat and potatoes" standards for professional competence for certification as a municipal court trial lawyer. The basic knowledge and experience standards would require that the applicant devote a substantial portion of his or her time to the litigation of municipal court matters. The applicant must also demonstrate the sole responsibility for ten contested actions (trials) over the course of his or her career (the number of contested actions mirrors those of the other existing certification areas). Of those ten trials, at least six must be DUI or DWI matters, and the majority of the ten must be tried to conclusion before the trier of fact. Contested actions are defined as those matters encompassed within the jurisdiction of the municipal court, including: DUI/DWI; municipal ordinances; motor vehicle violations; disorderly persons and petty disorderly persons violations; fish, game and boating violations; penalty collection proceedings. It is the Board's view that ten trials, six of which involve DUI/DWI counts will provide sufficient indicia of knowledge and experience in this practice area.

In addition, the applicant must demonstrate substantial involvement in this area of practice by listing the sole responsibility for ninety "litigated matters;" thirty per year for the

three years preceding the application that may not necessarily have been tried or tried to conclusion but involved significant discovery, pre- and post-trial motion practice, plea negotiations; or municipal court appeals. It is the Board's view that thirty matters per year for a total of ninety provide ample evidence of substantial involvement in the practice of municipal court law.

The peer reference and recertification requirements mirror those currently demanded of the other areas of certification and the Board sees no compelling reason to require anything different for municipal court trial attorneys. In respect of continuing legal education, the number of required credits for certification and recertification echoes that required of civil trial, criminal trial and workers' compensation attorneys. However, because it is recommended that municipal court trial attorneys have specific and significant experience litigating DUI and DWI matters, there is a corresponding educational requirement related to that subject matter. Therefore, it is recommended that the applicant for certification in this area of law obtain for original certification a minimum of twelve credits of the total needed on topics related to driving under the influence of drugs or alcohol and similarly, for recertification twenty of the sixty credits would have to be in those subject areas.

Based on the aforesaid, the Board respectfully recommends and requests that the Court grant certification in municipal court law. The remainder of this report addresses the concomitant Rule and Regulation amendments as proposed below.

As previously noted, this report also recommends certain housekeeping changes necessitated by the now conflicting or inconsistent language with the Regulations and Court Rule governing the recently adopted mandatory continuing legal education program, which began on January 1, 2010. In addition, there are other housekeeping and minor substantive amendments that reflect the current practice in the existing certified areas of law. A full description of these proposed changes is provided in Part III. A full text of the proposed amendments to the Board's Regulations is attached as Appendix A. The full text of the proposed amendments to Rule 1:39 et seq. is attached as Appendix B.

PART III. PROPOSED AMENDMENTS TO THE BOARD'S REGULATIONS

Part One. General Regulations

Regulation 101. Applicability and Citation of Regulations

RG. 101:1 [no change]...

RG. 101:2 [no change]...

Regulation 102. Board on Attorney Certification

RG. 102:1 Establishment; Appointment.

This proposed amendment reflects an additional certification committee for municipal court law certification.

RG. 102:2 Quorum. [no change}...

RG. 102:3 Operation; Functions.

This proposed amendment deletes references to accrediting CLE courses since continuing legal education accreditation of courses is now the function of the Board on Continuing Legal Education. Also proffered is amended language allowing for a “catch-all” to enable the Board to determine the courses that would comply with a specific specialty area as well as to approve certain educational activities that relate to the specific specialty area that may not have been accredited under the mandatory CLE program.

RG. 102:4 Fees, Funding. [no change]...

RG. 102:5 Reports.

This proposed language reflects a housekeeping change related to the actual practice of the Board, which does not submit yearly reports to the Court; rather reports are submitted as needed.

RG. 102:6 Effect of Board Membership. [no change]...

Regulation 103. Certification Committees

RG. 103:1 Appointment; Membership.

This proposed amendment provides for a municipal court law certification committee and the limitation on the number of members of that committee. In addition, a proposed housekeeping amendment deletes the term “ex-officio” since the Committee Chairs who sit on the Board are and have been voting members.

RG. 103:2 Quorum. [no change]...

RG. 103:3 Operation; Function.

This is a proposed housekeeping amendment making the language of the regulation more specific as to the actual functions of the Committees in respect of recertification.

RG. 103:4 Effect of Committee Membership. [no change]...

Part Two. Examination Eligibility Requirements

Regulation 201. General Eligibility Requirements. [no change]...

Regulation 202. Admission to the Bar; Ongoing Obligation; Practice of Law.

RG. 202:1 Minimum Plenary Admission.

A housekeeping amendment is sought to ensure that the applicant is in good standing in ALL jurisdictions where he or she actively practices for the five years preceding the application. (this would not apply to those with inactive licenses in other jurisdictions)

RG. 202:2 Ongoing Obligation. [no change]...

RG. 202:3 Practice of Law. [no change]...

Regulation 203. Professional Experience

RG. 203:1 Civil and Criminal Trial Attorney Requirements.

:1(a) [no change]...

:1(b) [no change]...

:1(c) this proposed amendment provides for a minor substantive change, lowering the number of required trial days for contested actions in civil trial

law. This proposed change is attributable to the significant effects that ADR and other procedural rules have on the trial practice.

:1(d) This new provision is recommended to address the change in the number of required trial days for criminal law that also relates to the impact of the changes in trial practice. Subsection (c) previously addressed both civil and criminal trial day requirements.

:1(e) Proposed to be redesignated from :1(d)

:1(e)1(i) suggested amendment attributable to the current changes in criminal trial litigation. The proposed language enables the Board to consider as contested actions other significant matters such as: domestic violence, contempt matters, or unique motions, so long as there are no more than five, in addition to indictable offenses.

:1 (e) 1 (ii) proposal to delete a reference to a minimum of \$25,000 in controversy in a civil matter; which would allow for the use of Special Civil Part matters as contested actions, so long as there are no more than three listed in any application for civil trial certification. This proposed change is suggested in order to acknowledge the effect of ADR on the ability to try cases in the Law Division or Chancery Part.

:1(e) 1 (iii) [no change]...

:1(e) 1 (iv) [no change]...

:1 (f) Proposed to be redesignated from :1(e)

:1(g) Proposed to redesignated from :1(f)

RG. 203:2 Matrimonial Law Requirements

:2(a) [no change]...

:2(b) [no change]...

:2(c) [no change]...

:2(d) [no change]...

:2(e) [no change]...

:2(f) [no change]...

:2(g) 5 This proposed provision is recommended to allow for the consideration of mediations toward the experience standards because mediations are utilized and encouraged more frequently in current matrimonial practice.

:2(h) [no change]...

:2(i) [no change]...

RG. 203:3 Workers' Compensation Law Requirements.

:3(a) [no change]...

:3(b) [no change]...

:3(c) [no change]...

:3(d) [no change]...

:3(e) (i) recommended housekeeping change to better define a trial day

:3(e) (ii) recommended housekeeping change to conform to current practice by providing language in respect of the total number of witnesses required.

:3(e) (iii) recommended housekeeping amendment to provide a more complete definition that conforms to current Board practice in respect of the definition of medical testimony required.

:3(e) (iv) [no change]...

:3(e) (v) recommended housekeeping amendment to better define Section 20 settlements.

:3(e) (vi) proposed housekeeping amendment to define that the requirement relates to Trial on Reports, conforming to existing Board practice.

:3(e) (vii) housekeeping amendment to conform to current Board practice regarding the taking of testimony.

:3(f) [no change]...

RG. 203:4 Municipal Court Law Requirements.

This entire proposed provision sets forth the Board's proposed standards relating to the professional, educational, and knowledge and experience requirements for the proposed specialty certification in municipal court law. The proposed standards are fully described in the body of the Board's report in Part II of this report and follow the format and framework of the existing regulations.

:4(a) relates to the proposed requirement that the applicant devote of a substantial portion of time to the practice of municipal court law;

:4(b) relates to the proposed litigated matters requirement of ninety matters, thirty per year in the three years preceding the application;

:4 (c) relates to the proposed requirement of ten contested actions, six of which have to be in DUI/DWI matters and the majority of which have to be tried to conclusion before the trier of fact;

:4(d) defines contested actions and litigated matters;

:4(e) provides the applicant with the time limitations for the types of matters listed in the application; and

:4(f) provides the applicant with the information required in the application.

Regulation 204. Professional Reputation

RG. 204:1 Applicant's Submission

:1(a) A recommended housekeeping amendment conforming the language to current practice by providing that the attorney must demonstrate professionally fitness as well as competence in order to be certified as a specialist.

Professional fitness relates to disciplinary matters and professional responsibility/professionalism. In addition, there is a proposed amendment to provide for municipal court certification. An additional housekeeping amendment is proposed to conform to the current practice of requiring the applicant to provide the names of five attorneys and three judges as references. Subsection (1) is newly added to provide that for municipal court law, a member of the bench is a municipal court judge.

:1 (b) minor housekeeping amendment related to the term contested action.

:1 (c) [no change]...

:1(d) [no change]...

RG. 204:2 [no change]...

RG. 204:3 [no change]...

Regulation 205. Educational Experience

RG. 205:1 General Requirements. Proposed housekeeping amendments related to the newly created mandatory continuing legal education program; language that is in conflict or inconsistent with the current mandatory education program is recommended to be deleted.

:1(a) recommendation to delete the existing (a) as inconsistent with the mandatory CLE program and replace with a new (a) that allows for a “catch-all” for the Board’s review of educational activities that comply with the specialty requirements as well as those courses that may not have obtained approval under the mandatory CLE program but relate to the applicant’s area of specialty that the Board may, in its discretion, consider.

:1(b) [deleted]...

:1(c) [deleted]...

:1(d) [deleted]...

RG. 205:2 Civil and Criminal Trial Law Requirements.

A proposed amendment in effort to be consistent with mandatory CLE program, where credits are calculated based on a 50 minute hour. Thirty-six credits over three years are equal to thirty credits over three years at sixty minutes. Proposed amended language allowing for courses in ethics/professional responsibility and professionalism as meeting the certification requirement, in addition to courses on substantive law related to the certified attorneys specialty.

The Board has decided not to recommend that certified attorneys be required to take any more CLE credits than are now required under the mandatory CLE program. Certified attorneys are more limited than the general legal population because they are required to take all their courses in their specialty area or in ethics/professional responsibility or professionalism; they have no freedom to take any course available.

RG. 205:3 Matrimonial Law Requirements.

A proposed amendment consistent with the changes attributable to the mandatory CLE requirements.

RG. 205:4 Workers’ Compensation Law Requirements.

A proposed amendment consistent with the changes attributable to the mandatory CLE requirements.

RG. 202:5 Municipal Court Law Requirements.

This is a proposed new provision relating to the proposed CLE requirement for the municipal court law specialty, which mirrors the existing requirements for civil and criminal trial law, except for a specific educational credit requirement in the subject matter of DUI/DWI law.

RG. 205:5 Videotapes; Audiotapes. [deleted]... as inconsistent with mandatory CLE.

RG. 205:6 Evaluation Criteria. A proposed amendment conforming to the new mandatory CLE program.

:6 (b) [deleted]...

:6 (d) proposed additional provision providing for a case-by-case “catch-all” that enables the Board to review courses for meeting the certification requirements and to review courses not approved under mandatory CLE but that relate to the area of specialty.

RG. 205:7 Program Approval. [deleted]... as inconsistent with mandatory CLE.

RG. 205:8 Sponsor Fee. [deleted]... as inconsistent with mandatory CLE.

RG. 205:9 Continuing Legal Education Obligations of Certified Attorneys.

Proposed renumbering as 205:7 and amended language to conform to the new mandatory CLE requirement.

:7(a) proposed amendment conforming to the mandatory CLE program and providing for the need to obtain sixty credits in five years at a 50 minute hour, which is the same as existing 50 credits over five years at the 60 minute hour. Proposed additional language allows for ethics/professional responsibility and professionalism courses to count toward the certification education requirement.

Subsections 1 through 11 are deleted as inconsistent with the mandatory CLE program.

:7(b) this new subsection is added to allow for a “catch-all” review by the Board for courses not approved under mandatory CLE but which might be related to the certification specialty.

:7(c) Matrimonial Law Requirements. renumbered from 7(b); proposed amended language to conform to mandatory CLE requirement.

:7(d) Municipal Court Law Requirements. Proposed language added requiring specific number of credits of education in the DUI/DWI areas of law.

Regulation 206 Application Fee.

Recommended housekeeping change deleting the specific fee amount and replacing it with general language that will allow for subsequent fee changes without concomitant regulation changes.

Regulation 207 Review of Application; Determination of Eligibility for Examination [no change]...

Part 3 – Examinations

Regulation 301. Written Examination

RG. 301:1 Examination Requirements. [no change]...

RG. 301:2 Application Forms. [no change]...

RG. 301:3 Examination Fee. Proposed housekeeping change removing designation of a specific fee amount.

RG. 301:4 Time and Place. [no change]...

RG. 301:5 Examination Format. [no change]...

RG. 301:6 Scope of Examination.

A. General and Civil Trial [no change]...

B. Criminal Trial [no change]...

C. Matrimonial Law [no change]...

D. Workers’ Compensation Law [no change]...

E. Municipal Court Law. Proposed new provision providing the likely subject areas for an examination in municipal court law.

Regulation 302. Grading and Distribution of Results

[no change]...

Part 4 – Certification of Applicant

Regulation 401. Report of Determination

RG. 401:1 Grant of Certification. proposed amendment relating to certification in municipal court law

RG. 401:2 Withholding Certification; Effect. [no change]...

Regulation 402 – Consequences of Certification

RG. 402:1 Duration of Certification. [no change]...

RG. 402:2 Annual Fee. Suggested housekeeping amendment to remove specific fee amount; providing for more general language related to the annual fee.

RG. 402:3 Effect of Certification.

:3(a) [no change]...

:3(b) [no change]...

:3(c) [no change]...

:3(d) [no change]...

:3(e) new subsection recommended to provide for municipal court law certification.

RG. 402:4 Use of Approved Logo. [no change]...

RG. 402:5 Violations; Sanctions. [no change]

RG. 402:6 Division of Fees [no change]...

RG. 402:7 Obligations of Certified Attorneys. Proposed housekeeping amendment providing for a ninety- day time limitation on notifications of disciplinary or malpractice matters.

Part 5 – Recertification

Regulation 501. Filing for Recertification

RG. 501:1 Notice and Applications: Proposed housekeeping amendment to conform to existing practice requiring professional fitness as well as competence.

:1(a) Civil Trial Law. [no change]...

:1(b) Criminal Trial Law. [no change]...

:1(c) Matrimonial Law. [no change]...

:1(d) Workers' Compensation Law. [no change]...

:1(e) Municipal Court Law. A proposed new provision delineating the recertification requirements of municipal court law, which are consistent in format and framework with the other existing areas of certification.

RG. 501:2 Fee. A proposed housekeeping amendment deleting a specific fee amount.

RG. 501:3 Supplemental Information; Disposition. [no change]...

RG. 501:4 Conditional Recertification. [no change]...

RG. 501:5 Withholding Recertification; Review. [no change]...

Part 6 – Ineligibility & Termination; Lapsed Certification

Regulation 601 Ineligibility and termination; Lapsed Certification

[no change]...

Part 7 – Confidentiality

Regulation 701. Confidentiality

[no change]...

NOTE: The full proposed draft amendments to the Board’s Regulations are attached as Appendix A.

PART IV. PROPOSED AMENDMENTS TO RULE 1:39-1 to – 9

Rule 1:39 Introductory Paragraph and Title

Proposed amendment providing for a new certification in municipal court law. In addition, the title of the Rule is amended to delete “legal education” as the Board is no longer responsible for general course accreditation now that New Jersey has a mandatory education program governed by another Rule 1:42 and regulations of the Board on Continuing Legal Education.

Rule 1:39-1. Board on Attorney Certification

- 1(a) Appointment; Officers. [no change]...
- 1(b) Quorum. [no change]...
- 1(c) Regulations. Proposed housekeeping change to conform to existing practice of requiring professional fitness as well as professional competence.
- 1(d) Operations. A proposed housekeeping amendment regarding a function of the Board that is consistent with current Board practice.
- 1(e) Legal Education. Deletion of all language that conflicts with Rule 1:42 and the Regulations of the Board on Continuing Legal Education. Addition of language related to the Board’s ability to consider continuing education activities not approved under the mandatory CLE program that might on a case-by case basis count toward meeting the education requirement of the certified specialty.
- 1(f) Reports. Proposed housekeeping amendment to conform to current practice.
- 1(g) Staffing and Funding. Proposed housekeeping amendment. Deletion of current title of provision (Funds) and changed to Staffing and Funding. Addition of language related to the staffing of the program that is consistent with the language found in Rule 1:42, as staff to the Board on Continuing Legal Education is shared with the Board on Attorney Certification.
- 1(h) Fees. Proposed housekeeping amendment related to who is required to pay the fees charged under the certification program.
- 1(i) Effect of Board Membership. [no change]...
- 1(j) Immunity. New section proposed, consistent with Rule 1:42, related to the immunity from suit of the Board members and staff.

Rule 1:39-1A. Certification Committees

- 1A(a) Appointment; Officers. Proposed amendment to reflect the new Certification Committee to must be appointed to review applications, draft examinations, and

recommend to the Board applicants for certification and recertification in municipal court law.

-1A(b) Quorum. Proposed housekeeping amendment related to the need for a majority vote of any decision of the quorum, conforming to existing practice and Rule 1:39-1(b).

-1A(c) Operations. [no change]...

-1A(d) Effect of Certification Committee Membership. [no change]...

-1A(e) Immunity. New paragraph added, consistent with the proposed amendment to Rule 1:39-1 and with language found in Rule 1:42, providing Committee members with the same immunity from suit as the Board.

Rule 1:39-2. Eligibility

-2(a) Minimum Admission Period; Practice of Law. Proposed housekeeping amendment – grammatical change.

-2(b) Professional Experience. [no change]...

-2(c) Professional Reputation. [no change]...

-2(d) Educational Experience. Proposed housekeeping amendment deleting language conflicting with or inconsistent with Rule 1:42 governing the mandatory continuing legal education program.

-2(e) Ongoing Obligation. [no change]...

Rule 1:39-3. Written Examinations.

[no change]...

Rule 1:39-4. Decision by Certification Committee or Board – proposed housekeeping change to title of this Rule to conform to existing practice.

-4(a) Ineligible Applicants. [no change]...

-4(b) Duration of Eligibility; Qualified Applicants. [no change]...

Rule 1:39-5. Grant; Duration; Withholding of Certification

-5(a) Grant of Certification. Proposed addition of language related to municipal court law certification.

-5(b) Duration of Certification. [no change]...

-5(c) Withholding of Certification. [no change]...

Rule 1:39-6. Effect of Certification.

[no change]...

Rule 1:39-7. Renewal of Certification.

Proposed housekeeping amendment conforming language to the existing practice requiring professional fitness as well as professional competence in order to maintain or renew an attorney's certification in a specialty.

Rule 1:39-8. Termination of Certification.

-8(a) Basis for Termination. [no change]...

-8(b) Procedures to Follow. [no change]...

- 8(c) Effect of Determination of Unethical Conduct. [no change]...
- 8(d) Hearing Panels; Recommendation to Court. A proposed housekeeping amendment to conform the language of the rule to existing practice.
- 8(e) Burden of Proofs; Effect of Termination. [no change]...
- 8(f) Lapsing of Certification. [no change]...

Rule 1:39-9 Review of Action of Board
[no change]...

NOTE: The full text of proposed amended Rule 1:39-1 to -9 is attached as Appendix B

PART V. CONCLUSION

Municipal court practice attorneys litigate in the “people’s court,” where there is a great volume of cases and significant potential for unsophisticated legal consumer/litigants seeking legal representation. Therefore, its inclusion as an area of certification is most warranted and the nature of the practice area fits well within the existing framework of New Jersey’s certification program. The Board is of the view that it has proposed a workable set of standards for this proposed certified specialty that is consistent with the existing requirements for the current specialty areas, capturing the essence of the practice and requiring a demonstration of substantial involvement in that field of law. The attached proposed amended Regulations and amended Court Rule reflect these recommended standards for this new specialty area, municipal court law.

In addition, the Board proposed housekeeping changes necessitated by the currently inconsistent and conflicting language relating to the accreditation of continuing legal education that is now under the umbrella of the Board on Continuing Legal Education. Further, the Board on Attorney Certification recommended some slight substantive and housekeeping changes to the existing areas of certification, most of which conform to the language of the regulations to existing practice.

It is respectfully requested that the Court grant expansion into municipal court law, and that it approve the proposed amendments to the Board’s regulations and to Rule 1:39:1 – to -9.

Respectfully Submitted,
The Board on Attorney Certification
William E. Staehle, Chair
Carol L. Forte, Vice Chair
John Zen Jackson, Chair Civil Committee
Robert A. Obler, Chair Criminal Committee
Lynne Strober, Chair Matrimonial Committee
Alfred P. Vitarelli, Chair Workers’ Comp.
Counsel to Board: Wendy L. Weiss
June 30, 2010

Appendix A: Regulations of the Board on Attorney Certification

PART ONE - GENERAL REGULATIONS

REGULATION 101. Applicability and Citation of Regulations

101:1 These regulations have been adopted by the Board on Attorney Certification and approved by the Supreme Court pursuant to Rule 1:39-1(c).

101:2 These regulations may be cited as, for example, "RG. 102:1."

REGULATION 102. Board on Attorney Certification

102:1 Establishment; Appointment. To assist in the administration of the certification function the Supreme Court shall establish, in accordance with the Rules of Court, a Board on Attorney Certification. Pursuant to Rule 1:39-1(a), the Board shall consist of not more than eleven members, all of whom shall be members of the Bar of this State. Board membership shall include the Chairs of each of the [four] five Certification Committees, appointed pursuant to RG. 103:1. The remaining members, who shall not exceed [seven] six in number, must be certified in a designated area of practice to be eligible for appointment to the Board, except for those appointed to serve on a newly created Certification Committee.

102:2 Quorum. One more than half the number of members sitting on the Board shall constitute a quorum and all determinations shall be made by a majority of a quorum.

102:3 Operation, Functions. The Board shall, consistent with the Rules of Court and these Regulations, establish procedures, publish forms and maintain records as required for the conduct of the Board's operations and the certification of attorneys. The Board shall function as an appellate arm for Certification Committee decisions. The Board will be responsible for the financial and administrative operations of the certification program. The Board will maintain responsibility for policy; for making recommendations to the Court in respect of Rule and Regulation amendments; and for [accrediting continuing legal education courses] determining whether courses taken, which have been approved for accreditation by the Board on Continuing Legal Education for the mandatory continuing legal education program, qualify toward meeting the continuing education requirements related certification in a particular specialty. The Board may also determine accreditation , on a case by case basis, whether certain educational activities related to the area of specialty but not accredited under the mandatory continuing legal education program may be considered for accreditation toward the educational requirements of certification. The Board will delegate to the Committees the responsibility of preparing and drafting applications and peer reference forms, preparing, drafting and grading examinations, and reviewing applications for certification and determining eligibility.

102:4 Fees; Funding. Each applicant for certification shall pay such fees as may be provided for by these Regulations. The fees shall be established by the Board, subject to the approval of the Court. To the extent possible, sufficient revenue should be generated to enable the program to be self-supporting. To the extent that the Board is not self-supporting, funds necessary for the operation of the certification program shall be provided by the Administrative Office of the Courts.

102:5 Reports. The Board shall submit an annual report on the status of the certification program to the Court by February 15th of each year. Additional reports on the activities of the Board may be submitted to the Supreme Court as the Board deems necessary or appropriate.

102:6 Effect of Board Membership. During service on the Board on Attorney Certification, no Board member shall apply for or be examined for certification in this State. A previously-certified Board member may be recertified in the designated area of practice during his or her term of service on the Board.

REGULATION 103. Certification Committees

103:1 Appointment; Membership. The Court shall appoint Certification Committees to assist the Board in the consideration of applications for certification. Members shall be practicing attorneys or retired Judges or Justices. They shall serve for three-year terms and shall be eligible for reappointment for three successive terms. In establishing the Committees, the Supreme Court may appoint some members to an initial term of less than three years. The following Committees are hereby established, with the number of members noted:

- a. Committee on Civil Trial Law (no more than 7 members);
- b. Committee on Criminal Trial Law (no more than 3 members);
- c. Committee on Matrimonial Law (no more than 9 members); [and]
- d. Committee on Workers' Compensation Law (no more than 5 members); and
- e. Committee on Municipal Court Law (no more than 9 members).

The Chair of each Certification Committee shall serve on the Board of Attorney Certification[, ex officio]. Certification Committee members need not be certified in a designated area of practice to qualify for appointment.

103:2 Quorum. For each Committee, one more than half the number of members shall constitute a quorum. All decisions on certification and recertification shall be made by a majority of the appropriate Certification Committee.

103:3 Operation, Function. The Certification Committee for each designated area of practice shall develop appropriate forms and schedules for the submission of applications by members of

the bar seeking certification or recertification. All forms and schedules shall be approved by the Board. Certification Committees shall review applications for certification to determine eligibility for the written examination. Adverse decisions by a Certification Committee in respect of eligibility or examination are reviewable by the Board and the Supreme Court pursuant to the Rules of Court and these Regulations. The Certification Committee shall also draft and grade the written certification examinations and review applications for recertification, making recommendations to the Board of who shall be recertified. The Certification Committees shall undertake such other duties as may be, from time to time, assigned by the Board.

103:4 Effect of Committee Membership. During service on a Certification Committee, no Committee member shall apply for or be examined for certification in this State. A Committee member who is not yet certified and who has served his or her full term on the Committee may apply for certification at the conclusion of his or her term on the Committee. Once making application, the attorney, if otherwise eligible for certification, will not have to take the examination. A previously-certified Committee member may be recertified in the designated area of practice during his or her term of service on the Committee. An attorney who sits on a Certification Committee who is not yet certified may offer a referral fee pursuant to RG. 402:6 so long as a referral fee is permitted.

PART TWO - EXAMINATION ELIGIBILITY REQUIREMENTS

REGULATION 201. General Eligibility Requirements

Pursuant to Rule 1:39-2, an applicant must meet the requirements set forth herein to be eligible for admission to a certification examination in a designated area of practice.

REGULATION 202. Admission to the Bar; Ongoing Obligation: Practice of Law.

202:1 Minimum Plenary Admission. Admission to the bar of the State of New Jersey for the purpose of meeting the requirements of this section commences from the date of an attorney's plenary admission. An applicant must have been in good standing in all jurisdictions in which the applicant holds a bar license for at least the five years immediately preceding the filing of the application, and must so certify.

202:2 Ongoing Obligation. Each applicant has an ongoing responsibility to report to the Board Any malpractice actions brought, disciplinary complaints filed, fee arbitrations filed, or any discipline imposed on him or her during the pendency of the application. In addition, each applicant has an ongoing obligation to notify the Board during the pendency of the application process any additional information that relates to the requirements for certification.

202:3 Practice of Law. Applicants for certification must be 1) engaged in the private practice of law, wherein the applicant represents and gives legal advice to clients, maintains a bona fide office [in New Jersey] pursuant to Rule 1:21-1(a) and maintains the appropriate bank accounts pursuant to Rule 1:21-6; or 2) employed by State, county or municipal government representing and giving legal advice to clients.

REGULATION 203. Professional Experience

203:1 Civil and Criminal Trial Attorney Requirements. The applicant must establish that:

- (a) He or she has devoted a substantial portion of professional time to the preparation of litigated matters in New Jersey, the majority of which are venued in Superior Court, for the three years immediately preceding the filing of the application;
- (b) He or she has had primary responsibility since plenary admission to the bar for a minimum of ten contested actions in New Jersey, at least six of which were venued in Superior Court or U.S. District Court for the District of New Jersey, and that were, in the opinion of the Board, substantially submitted to the trier of fact; and
- (c) In the case of civil certification, [T]the ten contested actions must include a minimum of [thirty] twenty trial days in Superior Court or U.S. District Court.

- (d) In the case of criminal trial certification, the ten contested actions must include a minimum of twenty-five trial days in Superior Court or U.S. District Court.
- ([d]e) Definitions. For the purpose of meeting the requirements of this Regulation, the following definitions apply:
- (1) Contested actions. To qualify as a "contested action," a matter must be adversarial in nature and involve substantial charges, claims, issues, or consequences. For example, the following features shall qualify a matter as a "contested action:"
- i) in criminal cases, an indictable offense[;]. The Board will also consider the following, but no more than five: domestic violence orders based upon crimes; contempt charges in family court; juvenile cases involving crimes; and trial-type hearings in Superior Court;
 - ii) in civil or administrative matters, a claim or demand that reasonably exposes the defendant or respondent to damages or any penalty [in an amount that exceeds \$25,000]; or
 - iii) in civil or administrative matters that do not present a claim for money damages or a civil penalty (such as chancery actions, declaratory judgment proceedings, and actions in lieu of prerogative writs), substantial public issues or, assuming a ruling or judgment against a party, exposure of that party to substantial adverse personal or economic consequences;
 - iv) such other matters as, in the Board's judgment, are of sufficient substance or import to qualify as "contested actions."

An arbitration proceeding shall not qualify as a contested action unless the applicant can demonstrate that the arbitration was substantially equivalent to a trial in Superior Court.

(2) Litigated matters. Litigated matters include contested actions as defined in this Regulation. Any other matter tried before a court, agency, or arbitrator shall also qualify as a litigated matter.

(3) Submission to trier of fact. A substantial number of the ten cases required by this Regulation must have been tried to conclusion as to the applicant's clients. In addition, the Board may consider cases that were settled prior to judgment or verdict, but only when the applicant completely prepared the case for trial by motion practice and extensive discovery. For example, such preparation might include a combination of any of the following: in civil actions, the taking of depositions, the preparation and service of non-uniform interrogatories and of answers to non-uniform interrogatories and requests for admissions; or, in the prosecution or defense of criminal matters that were concluded by plea negotiation, pretrial investigation including extensive factual investigation and the preparation of or opposition to pretrial motions presenting substantial and

complex issues arising under the State or Federal Constitution or Rules of Criminal Procedure.

([e]f) Time limitations. The ten contested actions may be cases that have been handled and concluded at any time between the date of the applicant's plenary admission to the practice of law and the date of the application for certification.

([f]g) Required information. The applicant shall submit the following information on a form adopted by the Board:

- (1) Substantial involvement in litigation. The applicant shall present a brief summary of each matter prepared for trial or tried within the three years immediately preceding the application. If more than thirty matters are eligible, the applicant shall submit no more than ten from each year, which shall fairly reflect the type of cases for which the applicant was responsible. The summary shall include the following:
 - i) caption and docket number of the case;
 - ii) date of disposition;
 - iii) forum;
 - iv) nature of action or proceeding;
 - v) names and addresses of all counsel;
 - vi) name of judge;
 - vii) number of trial days;
 - viii) presence or absence of a jury;
 - ix) point at which the proceedings were terminated; and
 - x) any additional information the applicant may deem to be relevant.
- (2) Applicant's ten contested actions. The applicant shall present the following details on the ten contested actions submitted pursuant to this Regulation:
 - i) caption and docket number of the case;
 - ii) date of disposition;
 - iii) forum;
 - iv) name of judge or other officer;
 - v) nature of action or proceeding;
 - vi) amount in controversy;
 - vii) principal issues involved;
 - viii) significant pretrial or post-trial motions;
 - ix) significant discovery problems or techniques;
 - x) status at which matter terminated;
 - xi) role in proceedings;
 - xii) outcome of proceedings;
 - xiii) names and addresses of all counsel; and
 - xiv) any additional information the applicant may deem to be relevant.

203:2 Matrimonial Law Requirements. The applicant must establish that he or she has:

- (a) Devoted a substantial part of his or her time to the practice of matrimonial law;
- (b) Devoted a substantial portion of professional time to the preparation of matrimonial litigated matters in New Jersey, venued in Superior Court, for the three years immediately preceding the filing of the application;
- (c) Had primary responsibility for a minimum of fifteen contested matrimonial law hearings per year over the three years immediately preceding the application;
- (d) Had primary responsibility for a minimum of twenty-five negotiated matrimonial law judgments or negotiated Property Settlement Agreements in the three years immediately preceding the application;
- (e) Had substantial involvement in a minimum of twenty-five contested matrimonial law actions during the three year period preceding the application or not less than forty contested matrimonial law actions during the applicant's career; and
- (f) A minimum of five contested matrimonial law trials or plenary hearings during the three year period preceding the application on a substantive or factual issue or, alternatively, a total of ten contested matrimonial law trials during the applicant's career. In addition, the Board may consider cases that were settled prior to judgment, but only when the applicant was the attorney primarily responsible for preparing the case for trial.
- (g) The Board, in its discretion, may relax certain of the standards set forth above in those instances in which an applicant demonstrates exceptional qualifications that justify certification and may, in doing so, consider significant active participation during the five year period preceding Certification in the following:
 - (1) Service as a Matrimonial Early Settlement Panelist;
 - (2) Service as counsel or as a guardian ad litem by appointment of the Court;
 - (3) Service with a County Bar, State Bar, national bar association, national or state organization dealing primarily in matrimonial law-related matters or service on Supreme Court Committees dealing with matrimonial law; [and]
 - (4) Authorship of published article(s) on matrimonial law[.]; and
 - (5) mediation proceedings that result in a substantial resolution of the case. The proceeding must either have been more than one session or longer than two hours.
- (h) Definitions. For the purpose of meeting the requirements of this Regulation, the following definitions apply:
 - (1) Contested matrimonial law hearing. A "contested matrimonial law hearing" is defined as any motion or plenary hearing in which one or more of the following issues are in dispute and are submitted to a Court or hearing officer for decision:
 - (i) dissolution;
 - (ii) alimony;
 - (iii) child support;

- (iv) domestic violence;
 - (v) removal;
 - (vi) custody or visitation;
 - (vii) equitable distribution of property related matters including questions of valuation;
 - (viii) tax issues related to dissolution, or equitable distribution;
 - (ix) post judgment matters;
 - (x) abuse and neglect;
 - (xi) termination of parental rights; and
 - (xii) appellate proceedings concerning any of the above.
- (2) Substantial involvement. "Substantial involvement" shall include such services as client interviewing, counseling and investigating, preparation of pleadings, participation in discovery, taking of testimony, presentation of evidence, negotiation of settlement, motion practice, drafting and preparation of Stipulations and/or marital settlement agreements as well as legal argument;
- (3) Contested matrimonial law trial and plenary hearing. A "contested matrimonial law trial" or plenary hearing" is defined to include any trial or plenary hearing that had a duration of a minimum of one-half day wherein the applicant has conducted direct and cross-examination of a witness;
- (4) Matrimonial law. "Matrimonial law" is the practice of law dealing with all aspects of antenuptial and domestic relationships, divorce, annulments, alimony, child support, separate maintenance, child custody matters, equitable distribution, domestic violence, paternity and post-judgment matters. Specifically, excluded are the following areas of practice: juvenile law, abuse and neglect and termination of parental rights. It is understood, however, that participation in abuse, neglect or termination of parental rights matters may, however, be considered by the Board in assessing an application.
- (i) Required information. The applicant shall submit the following information on a form adopted by the Board:
- (1) A brief summary of his or her contested matrimonial law hearings, contested matrimonial law actions, and negotiated matrimonial law judgments and settlements as required by this Regulation. The summary shall include the following:
 - i) caption and docket number of the case;
 - ii) date of disposition;
 - iii) forum;
 - iv) nature of action or proceeding;
 - v) names and addresses of all counsel;
 - vi) name of judge;
 - vii) number of trial days, if any;

- viii) issues presented, addressed, argued and resolved;
 - ix) point at which the proceedings were terminated; and
 - x) any additional information the applicant may deem to be relevant.
- (2) Contested matrimonial law trials or plenary hearings. The applicant shall present the following details on his or her contested matrimonial law actions or plenary hearings submitted pursuant to this Regulation:
- i) caption and docket number of the case;
 - ii) date of disposition;
 - iii) forum;
 - iv) name of judge or other officer;
 - v) nature of action or proceeding;
 - vi) issues in controversy;
 - vii) significant pretrial or post-trial motions;
 - viii) significant discovery problems or techniques;
 - ix) status at which matter terminated;
 - x) role in proceedings;
 - xi) outcome of proceedings;
 - xii) names and addresses of all counsel; and
 - xiii) any additional information the applicant may deem to be relevant.

203:3 Workers' Compensation Law Requirements. The applicant must establish that he or she:

- (a) Has devoted a substantial portion of his or her practice to the area of workers' compensation;
- (b) Has resolved to completion a minimum of 120 workers' compensation cases cumulatively over the three years immediately preceding the application for certification;
- (c) Has had primary responsibility since plenary admission to the bar for a minimum of ten contested workers' compensation actions resolved either to a decision by the compensation court or in substantial part prior to a settlement. As an alternative, two of the ten contested actions may be appeals to either the Appellate Division or the Supreme Court of New Jersey provided, however, that any such appeals submitted for consideration must be separate matters from any other contested action submitted towards meeting this requirement; and
- (d) Has had primary responsibility since plenary admission to the bar for five Second Injury Fund matters involving post-1980 cases and resulting in the entry of an order for Second Injury Fund liability.
- (e) Definitions. For the purpose of meeting the requirements of this Regulation, the following definitions apply:
 - (1) Contested actions. To qualify as a "contested action," a matter must be one in which the trier of fact can only decide the issue or issues presented to the Compensation Court after hearing substantive testimony from at least one witness and the petitioner. Substantive testimony is verbal or demonstrative evidence

presented by a witness that provides facts or expert opinion for consideration by the trier of fact and excludes testimony merely presented for the purpose of authentication or otherwise identifying records for admission into evidence.

- i) the term "substantial part" as used in this Regulation means that all witnesses have testified and that all that remains is a decision by the trier of fact. The term trial day as used in this regulation shall be one calendar day during which testimony from a witness shall be taken before a Judge of Compensation.
 - ii) contested actions submitted for consideration must have included the testimony of witnesses other than the petitioner, either in court or through sworn deposition. A total of at least thirty witnesses must be taken before a Judge of Compensation in court or by de bene esse deposition for use in a contested action.
 - iii) at least five of the ten contested actions must have included the testimony of a minimum of [two] ten medical-professional witnesses or other scientific experts. The applicant may include up to four medical or scientific experts whose testimony was taken in the course of Federal or Superior Court litigation.
 - iv) a contested action can include a motion for medical and temporary benefits and/or a maximum of two workers' compensation appeals. Any such appeal shall not be considered as separate and apart from any other contested matter involving the same petitioner and the same or accompanying claim petitions.
 - v) any matter closed pursuant to N.J.S.A. 34:15-20 may be included as a contested action provided testimony has been taken of at least two witnesses prior to the settlement under Section 20.
 - vi) all cases concluded by means of an Accelerated Award Proceeding or Trial on Reports cannot be used as a contested action.
 - vii) all [matters] testimony taken [listed] under this section must have been [tried] taken in substantial part by the applicant and no [matter] testimony may be submitted for consideration by more than one attorney on behalf of any one party. [Therefore, t]The applicant must have been responsible for appearing for 80% of the trial days for each contested action.
- (2) Litigated matters. In addition to the following, litigated matters include contested matters as defined in this Regulation:
- i) a closed case includes all cases resolved to conclusion either by voluntary settlement or by a decision of a judge of compensation;
 - ii) petitions dismissed for lack of prosecution pursuant to N.J.S.A. 34:15-54 may not be included in this requirement; and
 - iii) multiple claim petitions consolidated and/or those on behalf of a single petitioner shall constitute a single closed case.

- (3) Submission to trier of fact. A substantial number of the ten cases required by Section (c) of this Regulation must have been tried to conclusion as to the applicant's client. In addition, the Board may consider cases that were settled prior to judgment but only when the applicant completely prepared the case for trial and substantially tried the case prior to settlement. As such, the attorney must have been responsible for appearing for 80% of the trial days for each contested action.
 - (4) Time limitations. The ten contested actions and the five Second Injury Fund cases may be cases that have been handled and concluded at any time between the date of the applicant's plenary admission to the practice of law and the date of the application for certification.
 - (5) The term "resolved to completion" as used in this Regulation means either settled or tried to conclusion as to the applicant's client.
- (f) Required information. The applicant shall submit the following information on a form adopted by the Board:
- (1) Substantial involvement in litigation. The applicant shall present a brief summary of each of the 120 matters resolved within the three years immediately preceding the application as required in Section (b). These matters are exclusive of the ten contested actions required by Section (c). The summary shall include the following:
 - i) caption and docket number of the case;
 - ii) date of disposition;
 - iii) nature of action or proceeding;
 - iv) names and addresses of all counsel;
 - v) name of judge;
 - vi) number of trial days;
 - vii) point at which the proceedings were terminated;
 - viii) issues resolved; and
 - ix) any additional information the applicant may deem to be relevant.
 - (2) Applicant's ten contested actions. The applicant shall present the following details on the [ten] contested actions submitted pursuant to Section (c):
 - i) caption and docket number of the case;
 - ii) date of disposition;
 - iii) forum;
 - iv) name of judge or other officer;
 - v) nature of action or proceeding;
 - vi) issues in controversy;
 - vii) significant pretrial or post-trial motions;
 - viii) significant discovery problems or techniques;
 - ix) status at which matter terminated;
 - x) role in proceedings;
 - xi) outcome of proceedings;

- xii) names and addresses of all counsel;
- xiii) appellate issues, if applicable; and
- xiv) any additional information the applicant may deem to be relevant.

203:4 Municipal Court Law Requirements. The applicant must establish that he or she:

- (a) Has devoted a substantial portion of his or her professional time to the area municipal court practice.
- (b) Has devoted a substantial portion of his or her professional time to the preparation of a minimum of thirty litigated matters per year venued in municipal courts of New Jersey, for the three years immediately preceding the filing of the application;
- (c) Has had primary responsibility, since plenary admission to the bar, for a minimum of ten contested actions in New Jersey municipal courts that were, in the opinion of the Board, substantially submitted to the trier of fact; and
- (d) The ten contested actions must include a minimum of six municipal court trials resolving allegations related to driving while intoxicated or driving under the influence.
- (e) Definitions. For the purpose of meeting the requirements of this Regulation, the following definitions apply:
 - (1) Contested actions. To qualify as a "contested action," a matter must be one in which the trier of fact can only decide the issue or issues presented and is adversarial in nature, involving charges, claims, issues, or consequences related to the prosecution of a municipal court summons, complaint, and/or citation.
 - (i) The types of matters that will qualify as contested actions are those that are adjudicable in municipal court, which include: motor vehicle and traffic violations; disorderly persons, petty disorderly persons, or other non-indictable offenses; local ordinance violations; fish, game, and boating violations; penalty collection proceedings; and other matters authorized by statute or Court Rule to be under the subject matter jurisdiction of the municipal court.
 - (2) Litigated matters. Litigated matters include contested actions as defined in this Regulation but need not have been tried to conclusion before the trier of fact. The Board will consider matters that were resolved prior to trial when the applicant completely prepared the case for trial through motion practice, discovery, client interview, and plea negotiations. Municipal court appeals also may be considered as litigated matters. Any litigated matters listed may not be the same case as listed as a contested action.
 - (3) Submission to trier of fact. The ten contested actions required by this Regulation must have been tried to conclusion as to the applicant's clients.
- (f) Time limitations. The ten contested actions may be cases that have been handled and concluded at any time between the date of the applicant's plenary admission to the practice of law and the date of the application for certification.

- (g) Required information. The applicant shall submit the following information on a form adopted by the Board:
- (1) Substantial involvement in litigation/litigated matters. The applicant shall present a brief summary of each of the 90 matters prepared for trial or tried within the three years immediately preceding the application, listing 30 matters in each of those three years. The matters submitted shall fairly reflect the type of cases for which the applicant was responsible. The summary shall include the following:
- i) caption and docket/summons number of the case;
 - ii) date of disposition;
 - iii) nature of action or proceeding;
 - iv) names and addresses of all counsel;
 - v) name of judge;
 - vi) number of trial days;
 - vii) point at which the proceedings were terminated; and
 - viii) any additional information the applicant may deem to be relevant.
- (2) Applicant's ten contested actions. The applicant shall present the following details on the ten contested actions submitted pursuant to this Regulation:
- i) caption and docket/summons number of the case;
 - ii) date of disposition;
 - iii) name of judge;
 - iv) nature of action or proceeding;
 - v) principal issues involved;
 - vi) significant pretrial or post-trial motions or appeals;
 - vii) significant discovery and/or trial issues or techniques;
 - viii) status at which matter terminated;
 - ix) number of trial days;
 - x) role in proceedings;
 - xi) outcome of proceedings;
 - xii) names and addresses of all counsel; and
 - xiii) any additional information the applicant may deem to be relevant.

REGULATION 204. Professional Reputation

204:1 Applicant's submission; Civil Trial Law, Criminal Trial Law, Matrimonial Law, [and] Workers' Compensation Law, and Municipal Court Law.

- (a) Each applicant shall submit as references the names and addresses of [five] eight members of the bench or bar of this State who can attest to the applicant's competence as an attorney in the area of practice in which certification is being

sought. Members of the bar whose names are submitted for such purpose must be substantially engaged in that area of practice. [At least two] Three references shall be from judges who have observed the applicant's skills in the three years preceding the filing of the application. Five references shall be from members of the bar who have been an adversary or co-counsel with the applicant in trial.

(1) in the case of municipal court practice applications, members of the bench refer to judges of the municipal court.

- (b) At least two references shall be from attorneys who represented opposing parties, one of whom shall have represented an opposing party in a "contested [matter] action" or a "contested matrimonial law trial" as defined in these Regulations, and another of whom shall have represented an opposing party in a "litigated matter" or a "contested matrimonial law hearing" within the three years immediately preceding the filing of the application.
- (c) An applicant may not submit as a reference the name of any member of the bench or bar with whom the applicant has or had been formally associated in the practice of law.
- (d) Justices of the Supreme Court and members of the Board and the Certification Committees are not eligible as references for an applicant.

204:2 Reference letters. The Secretary shall forward forms of reference letters to each member of the bench or bar or other professional listed on the application as a reference with the request that the reference complete and return the letter directly to the Board. All replies shall be held confidential by the Board.

204:3 Board and Certification Committee inquiries. The Board and the appropriate Certification Committee may, in their discretion, make any inquiry deemed advisable in respect of the applicant's professional qualifications and reputation.

REGULATION 205. Educational Experience

205:1 General Requirements. {Except as provided below,] A[a]n applicant shall submit information demonstrating a completion of a specified number of hours of continuing legal education, approved and accredited for continuing legal education credits by the Board on Continuing Legal Education, specifically in the area of certification applied for or in ethics and professionalism within the three years immediately preceding the application. [An "hour" of continuing legal education shall include only the time spent in instruction. Meals and recess periods are specifically excluded. Applicants instructing or participating in a continuing legal education program as described in (b) and (c), below, will be credited with twice the time of actual instruction. Repeat presentations of the same lecture within a twelve-month period will gain no additional credit. Among the types of educational involvement that the Board will consider are:

- (a) Attendance at and completion of courses that relate to the improvement of trial and litigation skills in the specific area of practice for which certification has been sought;
- (b) Teaching or lecturing in programs of study or in courses in the area of practice for which certification has been sought;
- (c) Participating as a panelist in or speaker at seminars, symposia, or lecture programs in aspects of litigation in the area of practice for which certification has been sought;
- (d) "In-house" courses given by and for government attorneys only; provided, however, that an applicant may not use such courses for more than 50% of the continuing legal education credits required by this Regulation; and
- (e) Such other educational involvement as the Board may, in its discretion, deem appropriate.

The Board and/or Certification Committees shall review an applicant's submitted continuing education courses to ensure that the applicant has limited the credits required for certification to the area of specialty sought, exclusive of the credits obtained toward fulfillment of ethics/professional responsibility and professionalism credits as required under the mandatory continuing legal education program. [The Board shall evaluate such involvement on a case-by-case basis.]

- (a) the Board reserves the right to review and approve, on a case by case basis, other forms of educational activities that may not have been accredited under the mandatory continuing legal education program.

205:2 Civil and Criminal Trial Law Requirements. In addition to the general requirements of this Regulation, the applicant must complete in the three years preceding the application a minimum of thirty-six credits of continuing legal education in civil trial law and/or thirty-six credits of continuing legal education in criminal trial law. Those courses taken in ethics/professional responsibility and professionalism in fulfillment of the mandatory continuing legal education requirement can be included in the thirty-six credits required under this Regulation.

205:3 Matrimonial Law Requirements. In addition to the general requirements of this Regulation, those seeking certification in Matrimonial Law must demonstrate that within three years immediately preceding application, he or she completed no fewer than forty-five [hours] credits of continuing legal education programs, which must include:

- (a) Not less than fifteen (15) of the required [hours] credits must be satisfied by completion of approved educational programs in the areas of dissolution of marriage, child support, spousal support, or modification of support, contempt or enforcement, equitable distribution or property division, or taxation issues incident to dissolution of marriage or matters addressed by the prevention of Domestic Violence Act.

- (b) Not less than six (6) of the required [hours] credits must be satisfied by completion of approved educational programs in the area of custody of children.
- (c) Not less than three (3) of the required [hours] credits must be satisfied by completion of approved educational programs in the area of evidence.
- (d) Not less than three (3) of the required [hours]credits must be satisfied by completion of approved educational programs in the area of mediation, complimentary dispute resolution, psychological and counseling aspects of dissolution of marriage.
- [(e) Not less than three (3) of the required [hours] must be satisfied by completion of approved educational programs in the area of professional responsibility.] Those courses taken in ethics/professional responsibility and professionalism in fulfillment of the mandatory continuing legal education requirement can be included in the forty-five credits required under this Regulation.

205:4 Workers' Compensation Law Requirements. In addition to the general requirements of this Regulation, those seeking certification in Workers' Compensation Law must demonstrate In the three years preceding the application a minimum of thirty-six hours of continuing legal education courses, at least [ten] twelve of their education requirement having been devoted to medicine. Those courses taken in ethics/professional responsibility and professionalism in fulfillment of the mandatory continuing legal education requirement can be included in the thirty-six credits required under this Regulation.

205:5 Municipal Court Law Requirements. In addition to the general requirements of this Regulation, those seeking certification in Municipal Court Law must demonstrate in the three years preceding the application a minimum of thirty-six hours of continuing legal education courses, at least twelve credits of their education requirement having been devoted to DUI/DWI issues. Those courses taken in ethics/professional responsibility and professionalism in fulfillment of the mandatory continuing legal education requirement can be included in the thirty-six credits required under this Regulation

[205:5 Videotapes; Audiotapes. For applicants seeking their initial certification in any designated area of practice, videotaped replays of continuing legal education courses will be granted credit only if given by a recognized sponsor and viewed in a structured setting.]

205:6 Evaluation Criteria. The Board shall apply the following criteria in establishing the substance of any listed educational experience:

- (a) Programs given prior approval by the Board on Continuing Legal Education shall automatically qualify towards establishing an applicant's substantial educational involvement, so long as they are in the area of certification applied for or are approved for accreditation in ethics/professional responsibility and professionalism;
- [(b) Programs not passed on by the Board shall qualify if presented:

- (1) For the purpose of advancing the certified area of practice through improving practice and procedures or through emphasis on the ethical obligations of counsel;
- (2) By qualified personnel;
- (3) By live instructors or with recorded materials supplemented by live commentators; and
- (4) With thorough and well-organized written materials.]
- (b) Programs that advance the education and expertise of the attorney in the area of specialty certification sought will qualify as meeting the educational requirements of this regulation.
- (c) The Board reserves the right to require an applicant to submit additional information on any program, including but not limited to, copies of the written materials and a list of the instructors, to determine its applicability to the area of specialty certification sought.
- (d) The Board will review and may approve, on a case by case basis, educational activities that have not been accredited under the mandatory continuing legal education program that relate to the applicant's practice and specialty.

[205:7 Program approval. Planned programs should be submitted for Board approval before they are conducted. Requests for pre-approval should be made at least one month prior to the scheduled date of the program. All submissions shall be reviewed to determine whether the program:

- (a) Is being presented by qualified personnel. To that end, a list of all instructors, with short statements on their qualifications, shall be forwarded to the Board with the request for approval. The list must be kept current;
- (b) Has live instruction or recorded materials supplemented by live instruction;
- (c) Has thorough, well-organized, and readable written materials; and
- (d) Is primarily designed to promote the skills required to be an effective, competent, and ethical attorney, or is designed to enhance or keep current an attorney's knowledge in the substantive law of the fields in which the attorney practices. Prior to determining that the foregoing requirements have been met, the Board may ask for such other information as it may deem appropriate.

Programs approved by the Board may be held out as such with the following language:

- "This program qualifies for _____ hours of CLE credit toward New Jersey Civil Trial Attorney Certification;"
- "This program qualifies for _____ hours of CLE credit toward New Jersey Criminal Trial Attorney Certification;"
- "This program qualifies for _____ hours of CLE credit toward New Jersey Matrimonial Attorney Law Certification;" or
- "This program qualifies for _____ hours of CLE credit toward New Jersey Workers' Compensation Law Attorney Certification."

The Board reserves the right to withdraw its approval of any program on notice to the sponsoring body.]

[205:8 Sponsor Fee. Sponsors of Continuing Legal Education programs that charge a registration fee of more than \$40 shall be assessed a sponsor's fee for each offering of the course for which Board approval is sought. The sponsor shall pay either a flat fee of \$100 or a fee of \$5 for each New Jersey attorney who attends the course (with a minimum assessment of \$25). Previously approved courses are subject to this fee each time the course is offered. Sponsors who seek retroactive approval for a course shall, in light of the attendance at the program, be required to pay whichever fee is the greater.]

205:[9]7 Continuing Legal Education Obligations of Certified Attorneys.

- (a) General Requirements. [Except as set forth in paragraph (b) below,] C[c]ertified attorneys shall satisfy their continuing legal education obligation required under this Regulation by completing a minimum of [fifty] ~~sixty~~ [hours]~~credits~~ of CLE programs that are directly related to the designated area of practice covered by the attorney's certification and that have been approved for accreditation by the Board on Continuing Legal Education for CLE credits. [An "hour" of continuing legal education shall include only time spent in instruction; meals and recess periods are specifically excluded.] Attorneys who are certified in more than one area of practice must fulfill a minimum of [75] 90 [hours] credits of continuing legal education in their area of specialty certification. Those courses taken in ethics/professional responsibility and professionalism in fulfillment of the mandatory continuing legal education requirement can be included in the sixty credits required under this Regulation.

[Among the types of educational involvement the Board, in its discretion, will consider are:

- (1) Programs directly related to improvement of litigation skills in the designated area of practice;
- (2) Substantive courses in the area of law in which the certified attorney conducts litigation as part of his or her practice;
- (3) Teaching or lecturing in programs of study for attorneys in the designated area of practice;
- (4) Participating as a panelist in or speaker at seminars, symposia, or lecture programs on aspects of the designated area of practice;
- (5) Authorship and publication in the designated area of practice;
- (6) Active participation in American Bar Association, New Jersey Bar Association, specialized Bar functions, and Supreme Court Committees dealing with specific substantive or procedural law issues in the designated area of practice;

- (7) Active participation in the work of a professional committee dealing with a specific problem of substantive or procedural law in the designated area of practice;
- (8) Inns of Court programs;
- (9) "In-house" courses taught by a certified attorney;
- (10) At-home or in-office viewing of video tapes and the analogous use of audio tapes of pre-approved continuing legal education programs, but only up to 50% of the continuing legal education requirement. If the video- or audio-taped course was not approved for continuing legal education credit when it was presented live, the Board may, in its discretion, decline to give the applicant credit for the course; and
- (11) Such other educational involvement as the Board may, in its discretion, deem appropriate.

An applicant's involvement in activities covered by paragraphs (6) and (7), above, cannot cumulatively account for more than 33% of the applicant's total CLE requirements for recertification.

Certified attorneys may satisfy their educational obligations by attending a combination of courses in the certified area of practice. At least thirty-five of the fifty required continuing legal education credit hours must be in courses that relate to the attorney's certified area of practice. The balance of the credit hours may be in the area of general trial or litigation skills or in cross-over courses. Cross-over courses are those courses taken in other areas of practice covered by the certification program, such as, for example, criminal courses taken by civil trial attorneys or civil courses taken by criminal trial attorneys.]

- (b) The Board shall evaluate attorney involvement on a case-by-case basis. The Board will review and may approve, on a case by case basis, educational activities that have not been accredited under the mandatory continuing legal education program that relate to the applicant's practice an specialty. The Board reserves the right to require an applicant to submit additional information on any program, including but not limited to, copies of the written materials and a list of the instructors, to determine its applicability to the area of specialty certification sought. Failure to comply with this Regulation is grounds for revocation of the attorney's certification or for a refusal to recertify that attorney.

[(b)](c) Matrimonial Law Requirements. The certified matrimonial law attorney must demonstrate that he or she has completed no fewer than 75 hours of continuing legal education programs, which must include satisfying the following:

- (1) Not less than thirty (30) of the required [hours] credits must be satisfied by completion of approved educational programs in the areas of dissolution of marriage, child support, spousal support, or modification of support,

contempt or enforcement, equitable distribution or property division, or taxation issues incident to dissolution of marriage or matters addressed by the Prevention of Domestic Violence Act.

- (2) Not less than twelve (12) of the required [hours] credits must be satisfied by completion of approved educational programs in the area of custody of children.
- (3) Not less than six (6) of the required [hours] credits must be satisfied by completion of approved educational programs in the area of evidence.
- (4) Not less than six (6) of the required [hours] credits must be satisfied by completion of approved educational programs in the area of mediation, complimentary dispute resolution, psychological and counseling aspects of dissolution of marriage.
- [(5) Not less than six (6) of the required hours must be satisfied by completion of approved educational programs in the area of professional responsibility.
- (6) As with initial certification, for each approved continuing legal education course taught the applicant is entitled to receive an additional one hour for preparation time for each hour of the course.]
- (5) Those courses taken in ethics/professional responsibility and professionalism in fulfillment of the mandatory continuing legal education requirement can be included in the 75 credits required under this Regulation.

REGULATION 206. Application Fee

Each applicant shall pay a non-refundable application fee [of \$200} as determined by the Board. The fee shall accompany the application for certification. A separate fee shall be paid with each application. Checks shall be made payable to ["Secretary, Board on Attorney Certification."]"Treasurer, State of New Jersey." This fee shall be in addition to the examination fee required pursuant to RG.301:3.

REGULATION 207. Review of Application; Determination of Eligibility for Examination.

207:1 Perfection of Application. After the filing of an attorney's application and reference forms, the appropriate Certification Committee shall determine whether additional inquiries are necessary. Any further information requested of the applicant must be submitted forthwith. On satisfaction that the application is complete, the Certification Committee shall determine whether the attorney is eligible to take the certification examination.

207:2 Notification. The Secretary shall notify each applicant in writing of the Certification Committee's determination regarding eligibility for the examination.

207:3 Eligibility; duration. An applicant found eligible must successfully complete the examination requirements within eighteen months of the date of the Secretary's notification. If eligibility expires, the applicant must file a new application for certification.

207:4 Ineligibility; review by Board. An applicant who is found ineligible to sit for the examination shall be notified of those areas in which he or she did not meet the program's requirements. Any applicant may supplement his or her application to correct deficiencies, but such supplemental materials must be submitted within fourteen days of the date of the Secretary's notification. An applicant who has been notified that he or she is ineligible to take the examination shall have fourteen days within which to petition the Board for review of the Committee's determination. The applicant shall submit twelve copies of his or her petition to the Secretary who shall present it to the Board for its consideration. The Board may seek such additional information as it may, in its discretion, determine is necessary for an appropriate disposition of the application.

PART THREE - EXAMINATIONS

REGULATION 301. Written Examination

301:1 General Requirements. Each applicant shall be required to complete successfully a written examination that is drafted by the appropriate Certification Committee and approved by the Board. Only applicants who have complied with the requirements of Part Two of these Regulations shall be eligible to take the written examination in a designated area of practice.

301:2 Application Form. An applicant notified of eligibility for examination pursuant to this Regulation shall be contemporaneously forwarded an application for admission to the written examination. The applicant shall be required to state an intention to sit for the examination.

301:3 Examination Fee. The returned application for admission to the written examination shall be accompanied by a non-refundable check or money order in [the] an amount [of \$150] determined by the Board, made payable to the [Secretary, Board on Attorney Certification] Treasurer, State of New Jersey.

301:4 Time and Place. The written examinations shall be prepared by the appropriate Certification Committee and shall be administered once each year by the Board. The time and location shall be set by the Board, and notification of the time and location shall be sent in writing to each applicant.

301:5 Examination Format. The examination may be in one or more of the following formats: videotaped scenarios requiring essay answers, written essay questions, short answer questions, multiple choice questions, and true/false questions. The Secretary shall inform the applicants of the format of each examination.

301:6 Scope of Examination. The examination shall include general practice and litigation skill questions in the designated area of practice. Areas covered in the examinations may include the following:

[PLEASE NOTE THAT THE LIST IS NOT INTENDED TO BE MORE THAN A GUIDE AND IS NOT ALL-INCLUSIVE.]

A. GENERAL AND CIVIL TRIAL

1. Pretrial preparation.
 - a. Problem recognition - advisability of suit-cost considerations.
 - b. Jurisdiction, venue, and choice of forum.
 - c. Applicability of statute of limitations.
 - d. Ethical considerations - conflict of interest - fee arrangements.
 - e. Competency to accept employment.
 - f. Retainer agreement.

- g. Investigation.
 - h. Legal research.
 - I. Settlement procedures.
 - j. Demand letter.
2. Filing suit.
- a. Pleadings.
 - 1) Elements of causes of action and defenses.
 - 2) Elements of damages.
 - 3) Temporary restraining orders and permanent injunctions and other extraordinary remedies.
 - b. Intervention.
 - c. Pretrial discovery and related motions.
 - d. Defensive cross-claims and counterclaims.
 - e. Pretrial practice.
3. Trial.
- a. Trial strategy and tactics.
 - b. Jury selection.
 - c. Opening statement.
 - d. Introduction and exclusion of evidence.
 - 1) Relevance.
 - 2) Competency of witnesses.
 - 3) Privileges.
 - 4) Presumptions.
 - 5) Impeachment.
 - 6) Opinion and expert testimony.
 - 7) Hearsay and hearsay exceptions.
 - 8) Exclusion for valid reason of evidence otherwise admissible.
 - 9) Judicial notice.
 - 10) Documentary and physical evidence.
 - 11) Cross-examination.
 - 12) Offer for limited purpose and re-offer.
 - 13) Offer of proof.
 - e. Motions during trial.
 - f. Establishing a trial court record for appeal.
 - 1) Objections to evidence.
 - 2) Exceptions to charges.
 - 3) Requests to charge the jury.
 - 4) Special interrogatories to the jury.

- g. Summation.
- h. Court's charge and instruction to the jury.
- I. Jury deliberation.
- j. Verdicts.
- k. Findings of fact and conclusions of law.
- l. Post verdict motions.
- m. Judgments.
 - 1) Form.
 - 2) Enforcement.
- 4. Rules of Professional Conduct.

B. CRIMINAL TRIAL
(in addition to those subjects common to CIVIL TRIAL)

- 1. Pretrial diversion.
- 2. Pretrial release.
- 3. Probable cause hearing.
- 4. Examining indictment, information, and complaint.
- 5. Pretrial discovery.
- 6. Continuance.
- 7. Severance.
- 8. Speedy trials.
- 9. Double jeopardy.
- 10. Immunity.
- 11. Confessions.
- 12. Search and seizure.
- 13. Identification.
- 14. Competency to stand trial.
- 15. Jury voir dire.
- 16. Rules of criminal evidence, e.g., impeachment, extraneous offenses, etc.
- 17. Sentencing.
- 18. Plea negotiations and guilty pleas.
- 19. Motion for new trial.
- 20. Post-conviction remedies.
- 21. Probation and parole granting.
- 22. Probation and parole revocation.
- 23. Executive clemency.
- 24. Substantive criminal offenses and defenses.
- 25. Juvenile crimes.
- 26. Rules of Professional Conduct.

C. MATRIMONIAL LAW

1. Divorce.
2. Alimony.
3. Child support.
4. Custody (including UCCJA, PKPA and Hague Convention on International Child Abduction).
5. Domestic violence.
6. URESA.
7. Premarital agreements.
8. Settlement agreements.
9. Equitable distribution.
10. Post-judgment modification and enforcement
11. Rules of Evidence.
12. Rules of Court.
13. Pleadings and pre-trial motion practice.
14. Pre-trial discovery.
15. Trial strategy and tactics.
16. Jurisdictional problems and venue
17. Ethics.
18. Fees and retainers.
19. Investigation and legal research.
20. Rules of Professional Conduct.

D. WORKERS' COMPENSATION LAW

1. Title 34.
2. Compensability.
3. Jurisdiction.
4. Claim filing Procedures and Answers thereto.
5. Calculations of Wage and Rate.
6. Motion Practice.
7. Discovery.
8. Eligibility for Temporary, Medical and Permanent Disability.
9. Second Injury Fund issues.
10. Social Security, including calculations of offsets pursuant to N.J.S.A. 34:15-95.5.
11. Dependency.
12. Cardiac and Cerebro-Vascular Injuries.
13. Occupational Injuries and Exposures, Including hearing loss.
14. State Temporary Disability Benefits.
15. Negotiations and Settlement.

16. Appellate Procedures.
17. Rules of Professional Conduct.

E. MUNICIPAL COURT LAW

1. Driving While Intoxicated and Driving Under the Influence Statutes and Case Law.
2. Title 39
3. Alcotest and Breathalyzer Issues.
4. Rules of Evidence and Procedure.
5. Jurisdiction, Service of Process, and Procedure.
6. Pre-trial Procedure.
7. Pre- and Post-trial Motions.
8. Bail, Search Warrants and Suppression.
9. Municipal Court Appeals.
10. Arraignments, Pleas, Sentencing, and Judgment.
11. Pre-trial Discovery.
12. Ordinance Violations
13. Disorderly Persons, Petty Disorderly Persons and Other Non-Indictable Laws and Offenses.
14. Fish, Gaming, and Boating Laws and Offenses.
15. Traffic Rules and offenses.
16. Civil Penalties.
17. Rules Governing Practice in Municipal Court, Rule 7:1 to 7:14.
18. All other substantive, evidential and procedural areas of law within the jurisdiction of the municipal court.
19. Rules of Professional Conduct.

REGULATION 302. Grading and Distribution of Results

302:1 Grading Procedures. Examinations shall be graded by the appropriate Certification Committee on a pass-fail basis. To receive a passing grade, the applicant must score 70% or above on the examination.

- (a) First Read. The examination answers are graded by members of the appropriate Certification Committee. Those applicants who score a grade of 59% or lower fail the examination and are not afforded a second read.
- (b) Second Read. Applicants who score a grade between 60% and 69% on the first read of their examination answers are given a second review by a different reader.
- (c) Third Read. If, after the second read, the applicant still scores a failing grade, the examination answers are graded for a third time by a different reader. All scores are then averaged for a final grade.

302:2 Notification to Applicant. The Certification Committee shall forward the results of the examination to the Board who shall instruct the Secretary to forthwith send to each applicant by first-class mail the result achieved. No publication of an individual result on an examination shall otherwise be made.

302:3 Failing Applicants; Reexamination; Review of Examination.

- (a) Applicants who fail the examination may sit for the next administration of the examination without having to file a new application for certification. Those applicants who fail the examination two times must file a completely new application for certification and meet all eligibility requirements discussed in Part Two of these Regulations.
- (b) Applicants who fail the examination may come to the office of the Board on Attorney Certification to review their examination answers along with the sample answers provided by the appropriate Certification Committee.
- (c) Should a failing applicant seek a review of the examination, he or she shall file a written request for review with the Board within fourteen days of receiving notification of the examination results. If the Board sustains the determination of the Certification Committee, the applicant may petition for review to the Supreme Court pursuant to RG. 401:2 of these Regulations.

PART FOUR - CERTIFICATION OF APPLICANT

REGULATION 401. Report of Determination

401:1 Grant of Certification. Successful applicants shall be recommended to the Supreme Court by the Board for certification as a civil trial attorney, criminal trial attorney matrimonial law attorney, [or] workers' compensation law attorney, or municipal court law attorney. In certifying applicants, the Supreme Court shall direct the making of an appropriate notation on the roll of attorneys. The Clerk of the Supreme Court shall then issue a document attesting to the attorney's certification, dated as of the entry of the certification on the roll of attorneys.

401:2 Withholding Certification; Effect. An applicant who fails to meet the eligibility requirements of Part Two of these Regulations or the examination requirements of Part Three may initially request review by the Board pursuant to RG. 207:4 or RG. 302:3, respectively. Should the Board sustain the decision of the appropriate Certification Committee, the applicant may request a review of the Board's action by filing a notice of petition for review with the Supreme Court within thirty days of the notification to the applicant of such failure. The notice shall be filed with the Secretary and the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and, if he or she is represented, the name and address of counsel. The notice shall designate the action of the Board sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. It shall be accompanied by the requisite filing fee, which shall be the same as that required of a notice for petition for certification. Thereafter, the proceedings shall be as set forth in Rule 1:19-8, Petitions for Review.

REGULATION 402. Consequences of Certification

402:1 Duration of Certification. A grant of certification shall be effective for five years from the date of the entry on the roll of attorneys.

402:2 Annual Fee. A certified attorney shall pay to the Board an annual fee [of \$100]as determined by the Board [to the Board] for each certification the attorney holds. The fee shall be paid no later than January 31st of each year, except that no fee shall be due during the calendar year in which the attorney first becomes certified. An additional {\$35} late fee as determined by the Board will be imposed on those attorneys who pay after the January 31st deadline of each year. Failure to pay the annual fee is grounds for termination of the attorney's certification. The Board shall annually report the names of attorneys failing to comply with the provisions of this regulation to the Supreme Court for such action as it deems appropriate.

402:3 Effect of Certification. Certification or the absence thereof shall not in any way limit the right of an attorney to practice law in that designated area.

- (a) A certified civil trial attorney may use the designation "Certified by the Supreme Court of New Jersey as a Civil Trial Attorney;"
- (b) A certified criminal trial attorney may use the designation "Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney;"
- (c) A certified matrimonial attorney may use the designation "Certified by the Supreme Court of New Jersey as a Matrimonial Law Attorney;" and
- (d) A certified workers' compensation attorney may use the designation "Certified by the Supreme Court of New Jersey as a Workers' Compensation Law Attorney[.];"
- (e) A certified municipal court law attorney may use the designation "Certified by the Supreme Court of New Jersey as a Municipal Court Trial Attorney."

An attorney so certified may use the above referenced designations in any dignified manner that complies with the Rules of Professional Conduct of the Supreme Court. An attorney so certified may not use any other combination of words to describe the certification.

402:4 Use of Approved Logo. A certified attorney may use a logo approved by the Supreme Court on his or her letterhead, business cards, and in advertising as long as the logo is not used in a way that would mislead the public in respect of any non-certified attorneys who practice with the certified attorney.

402:5 Violations; Sanctions. Certified attorneys who violate this Regulation shall be subject to appropriate action under the Rules of Court and Rules of Professional Conduct. Sanctions that may be imposed include suspension or revocation of certification and limited or permanent exclusion from applying for future certification.

402:6 Division of Fees. A certified attorney who receives a case referral from a lawyer who is not a partner in or an associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. Pursuant to Rule 1:39-6(d), referral fees shall not be made by certified attorneys in matrimonial matters.

402:7 Obligations of Certified Attorneys. A certified attorney is under a continuing obligation, during the duration of the certification period, to notify the Board of any malpractice action brought, fee arbitrations filed, disciplinary complaints filed, or discipline imposed on him or her within ninety days of the filing of the matter or the discipline imposed.

PART FIVE - RECERTIFICATION

REGULATION 501. Filing for Recertification

501:1 Notice and Application. A certified attorney may file for recertification during the final twelve months of the five-year period of certification provided for by RG. 402:1. Only those qualified to practice law in New Jersey will be recertified.

R. 1:21-1(a). Applications for recertification will be mailed automatically by the Secretary to the Board to those attorneys eligible for recertification. The form of application shall be approved by the Board.

The completed application for recertification shall include a current summary of the attorney's professional activities in New Jersey and must demonstrate a substantial involvement in the area of practice in which the attorney is certified during the five-year certification period.

(a) Civil Trial Law.

(1) The Board views substantial involvement in civil trial law as possessing some, if not all, of the following characteristics:

- (i) completion of five jury or non-jury trials over five years;
- (ii) motion practice;
- (iii) depositions;
- (iv) regular and consistent appearances in courts of general jurisdiction over the five year period;
- (v) appellate practice;
- (vi) appearances before State Boards and Agencies; and
- (vii) devotes a minimum of thirty percent of total time to the practice of civil litigation as defined above.

(2) The Board does not consider, without further explanation, engaging exclusively in any one of the following, as constituting substantial involvement:

- (i) supervision of other attorneys;
- (ii) appellate practice; or
- (iii) Board or Agency practice.

(3) If the applicant cannot demonstrate that he or she spends at least thirty percent of his or her total time on civil matters, without sufficient explanation, the applicant will not be recertified. He or she must then comply with Part Six of these Regulations regarding termination and lapsing of certification and must remove all references to the designation of certification from letterhead, advertising, and the like. However, the applicant has up to three years following the expiration of certification to demonstrate to the Board renewed substantial involvement as defined above. Should that renewed involvement be deemed satisfactory, the applicant may apply for certification as if making an original application. If the applicant is deemed eligible for certification again, the examination requirement will be waived.

(b) Criminal Trial Law.

(1) The Board views substantial involvement in criminal trial law as possessing some, if not all, of the following characteristics:

- (i) jury trials;
- (ii) motion practice;
- (iii) plea and sentencing dispositions;
- (iv) appellate work; and
- (v) regular and consistent appearances in courts of general jurisdiction involving criminal matters over the five year period.

(2) The Board does not consider, without further explanation, engaging exclusively in any one of the following as constituting substantial involvement:

- (i) municipal court practice;
- (ii) appellate practice;
- (iii) Board or Agency practice; and/or
- (iv) only a minimal portion of the applicant's practice devoted to criminal law as defined above.

(3) If the applicant cannot demonstrate that he or she engages in more than a minimal portion of his or her practice on criminal matters, without explanation, the applicant will not be recertified. He or she must then comply with Part Six of these Regulations regarding termination and lapsing of certification and must remove all references to the designation of certification from letterhead, advertising, and the like. However, the applicant has up to three years following the expiration of certification to demonstrate to the Board renewed substantial involvement as defined above. Should that renewed involvement be deemed satisfactory, the applicant may apply for certification as if making an original application. If the applicant is deemed eligible for certification again, the examination requirement will be waived.

(c) Matrimonial Law.

(1) The Board views substantial involvement in matrimonial law as possessing some, if not all, of the following characteristics:

- (i) a minimum of ten cases as lead counsel per year handled from institution of action to entry of judgment of divorce
- (ii) motion practice
- (iii) depositions
- (iv) appearances before early settlement panels
- (v) trials or plenary hearings
- (vi) post-judgment motions
- (vii) regular and consistent appearances in courts of general jurisdiction involving matrimonial matters over the five year period
- (viii) appellate practice

- (ix) devotion of a minimum of fifty percent of total time to the practice of matrimonial law as defined above
 - (2) The Board does not consider, without further explanation, engaging exclusively in any one of the following as constituting substantial involvement:
 - (i) supervision of other attorneys;
 - (ii) adoption practice;
 - (iii) domestic violence litigation;
 - (iv) appellate practice; or
 - (v) Board or Agency practice.
 - (3) If the applicant cannot demonstrate that he or she engages in more than a minimal portion of his or her practice on matrimonial law matters, without explanation, the applicant will not be recertified. He or she must then comply with Part Six of these Regulations regarding termination and lapsing of certification and must remove all references to the designation of certification from letterhead, advertising, and the like. However, the applicant has up to three years following the expiration of certification to demonstrate to the Board renewed substantial involvement as defined above. Should that renewed involvement be deemed satisfactory, the applicant may apply for certification as if making an original application. If the applicant is deemed eligible for certification again, the examination requirement will be waived.
- (d) **Workers' Compensation Law.**
- (1) The Board views substantial involvement in workers' compensation law as possessing some, if not all, of the following characteristics:
 - (i) resolution either by trial to completion or settlement of 200 workers' compensation cases over the five years
 - (ii) motion practice
 - (iii) regular and consistent appearances in workers' compensation courts in the State of New Jersey over the five year period
 - (iv) appellate practice
 - (v) devotion of a minimum of fifty percent of total time to the practice of workers' compensation law as defined above
 - (2) The Board does not consider, without further explanation, engaging exclusively in any one of the following as constituting substantial involvement:
 - (i) supervision of other attorneys; or
 - (ii) appellate practice.
 - (3) If the applicant cannot demonstrate that he or she engages in more than a minimal portion of his or her practice on workers' compensation law matters, without explanation, the applicant will not be recertified. He or she must then comply with Part Six of these Regulations regarding termination and lapsing of certification and must remove all references to the designation of certification from letterhead, advertising, and the like. However, the applicant has up to three years following the expiration of certification to demonstrate to the Board renewed substantial involvement as defined above. Should that renewed involvement be deemed satisfactory, the applicant may apply for certification

as if making an original application. If the applicant is deemed eligible for certification again, the examination requirement will be waived.

(e) Municipal Court Law.

(1) The Board views substantial involvement in municipal court law as possessing some, if not all, of the following characteristics:

- (i) two trials per year, including DUI/DWI matters, drug possession, and disorderly and petty disorderly offenses;
- (ii) motion practice;
- (iii) plea and sentencing dispositions;
- (iv) municipal court appeals; and
- (v) devotion of at least fifty percent of professional practice to the adjudication of municipal court matters.

(2) The Board does not consider, without further explanation, engaging exclusively in any one of the following as constituting substantial involvement:

- (i) matters addressing only gaming, fishing and boating offenses; ordinance violations; disorderly and petty disorderly persons offenses;
- (ii) appellate practice; and/or
- (iii) only a minimal portion of the applicant's practice devoted to municipal court law as defined above.

(3) If the applicant cannot demonstrate that he or she engages in more than a minimal portion of his or her practice on municipal court matters, without explanation, the applicant will not be recertified. He or she must then comply with Part Six of these Regulations regarding termination and lapsing of certification and must remove all references to the designation of certification from letterhead, advertising, and the like. However, the applicant has up to three years following the expiration of certification to demonstrate to the Board renewed substantial involvement as defined above. Should that renewed involvement be deemed satisfactory, the applicant may apply for certification as if making an original application. If the applicant is deemed eligible for certification again, the examination requirement will be waived.

The completed application shall also include a current summary of the applicant's required educational involvement in the area of certification during the period for which he or she had been certified. See RG. 205:[9]6. Each applicant shall submit as references the names and addresses of three members of the Bench and five members of the Bar of this State who can attest to the applicant's reputation and competence as a certified attorney. At least one attorney shall have been an adversary in a contested matter during the period of certification. In the case of municipal court law certification, the bench refers to judges of the municipal court. An applicant may not submit as a reference the name of any member of the bench or bar with whom the applicant is or has been formally associated in the practice of law. Justices of the Supreme

Court and members of the Board and the Certification Committees are not eligible as references for an applicant.

501:2 Fee. The application for recertification shall be accompanied by a non-refundable fee [of \$100] as determined by the Board in a check or money order made payable to the [Secretary of the Board] Treasurer, State of New Jersey.

501:3 Supplemental Information; Disposition. The appropriate Certification Committee or the Board may request supplementation of the information provided and may impose such additional requirements, including examinations, as it deems appropriate. The Certification Committee and the Board shall render a decision regarding the application for renewal of certification in the same manner as provided by these regulations for initial certification.

501:4 Conditional Recertification. In cases in which the Board or Committee determines that inappropriate conduct has resulted from the applicant's representation of clients caused by the applicant's failure to adequately litigate a case or by the applicant's substance abuse, psychological disorder, mental illness or such other grounds as the Board, with good cause, may determine relates to the applicant's status as a certified attorney, the Board or Committee may recommend recertification subject to conditions.

501:5 Withhold Recertification; Review. If the applicant has been denied recertification, he or she has the option of requesting a limited hearing before the Board to reconsider the decision to deny recertification. This hearing is limited to the applicant's submission of additional information and appearance before the Board. A member of the relevant Committee, a member of the Board or the Board's staff attorney will be the presenter. No other witnesses will appear. The applicant has the burden of proving that the Board's decision is incorrect. Within thirty days after final action of the Board on Attorney Certification with respect to the denial of recertification, the applicant may seek review thereof by serving on the Secretary of the Board a notice of petition for review. The procedures set forth in R.G. 401:2 shall apply.

PART SIX - INELIGIBILITY & TERMINATION; LAPSED CERTIFICATION

601:1 Ineligible and Inactive Certified Attorneys.

- (a) A certified attorney who is appointed as a full-time judge shall be ineligible for recertification while serving on the bench. Should such a judge leave the bench through retirement, resignation, or failure of reappointment, he or she may use his or her designation of Certified Attorney for up to two years. Recertification must be sought during the final twelve months pursuant to the requirements of RG. 501.
Nothing in this Regulation shall be construed to expand the limitations on the practice of law imposed by the Supreme Court on retired judges.
- (b) Certified attorneys who become precluded from practicing law in the area of their certification because of their service as
 - (1) part-time municipal court judges; or
 - (2) government employeesmay, on written notice to the Board, elect to transfer their certifications to inactive status during the period of their disqualification. To return to active status, an attorney must give written notice to the Board. The Board shall inform the attorney of the effective date of the attorney's return to active certified status.

An attorney on inactive status is ineligible for recertification. If the attorney seeks to return to active status after his or her certification has expired, the attorney shall be subject to the terms and conditions contained in section (a) of this Regulation.

- (c) Certified attorneys who are ineligible or inactive under this Regulation are not required to pay the annual fee during their disqualification. A return to active status shall be conditioned on the payment of the annual fee for that year.

601:2 Termination of Certification.

- (a) When Appropriate. The Board may terminate the certification of an attorney on its determination that the certified attorney no longer demonstrates continuing competence or has engaged in conduct or omissions to discharge responsibility that are not acceptable on the part of a certified attorney. In all cases a complaint, notice, and opportunity to be heard shall be given in accordance, as far as applicable, with the rules governing plenary ethics hearings. R. 1:20-3.
- (b) Disciplinary Proceedings; Effect of the Record. Whenever a certified attorney has been found guilty, either as an attorney or a judge, of unethical conduct in a disciplinary proceeding in this state resulting in public discipline, a copy of the decision and the record established in that matter shall be conclusive evidence of the facts established there. The sole issue to be determined by the Board shall be the extent of the sanction to be imposed. However, a respondent may introduce relevant evidence in mitigation that is not inconsistent with the essential facts established in the disciplinary action.

- (c) Hearing Panel; Report to Court. In all cases hearings may be held before a panel of three members of the Board, which shall render a report to the full Board. In appropriate circumstances, the matter may be referred for consideration to the District Ethics Committee. The Board shall recommend to the Supreme Court the sanction to be imposed, which may include either termination or suspension for a stated period.
- (d) Burden of Proof. In proceedings under this Rule, the presenter shall have the burden of proof. The respondent shall have the burden of proving all affirmative defenses, constitutional challenges, and mitigating circumstances, if any. The standard of proof for the presenter and the respondent shall be clear and convincing evidence on all issues. No person whose certification has been terminated pursuant to this Rule may be thereafter again certified except in accordance with the procedure set forth in the Rules of Court and these Regulations.
- (e) the Board shall notify other certifying agencies to which the applicant holds a certification that the Supreme Court has terminated the applicant's certification.

601:3 Lapsed Certification. An attorney who allows his or her certification to lapse and thereafter seeks to be certified shall be required to comply with all of the requirements for making an initial application for certification. The Board shall notify other certifying organizations to which the certified attorney holds a certification that the attorney's certification by the Supreme Court has lapsed.

PART SEVEN - CONFIDENTIALITY

REGULATION 701. Confidentiality

701:1 Board Records. All records of the Board on Attorney Certification, including materials submitted to the Board and the Certification Committees by third parties, shall remain confidential pursuant to Rule 1:39-1(c) or as provided by the Supreme Court, until and unless the Supreme Court orders to the contrary, or:

- (a) at the request of the applicant, in which event, he or she shall only have access to materials he or she submitted to the Board;
- (b) with consent of the applicant, in which event, the person or entity obtaining the applicant's consent will only have access to the materials submitted by the applicant;
- (c) At the request of the Office of Attorney Ethics or Disciplinary Review Board in connection with the investigation, consideration, and determination of a disciplinary matter that involves the certified attorney; or
- (d) when an attorney's certification by the Supreme Court has lapsed or been terminated, the Board shall release all necessary information to other certifying organizations that have certified the attorney that informs the organization why he or she is no longer certified by the Supreme Court of New Jersey.

No examination results shall be released for failing applicants to anyone other than the applicants.

701:2 Proceedings before the Board and Certification Committees. All proceedings before the Board or appropriate Certification Committee and reports to the Court shall be confidential.

701:3 Applicant Access to Records. The applicant shall not have access to materials in his or her file submitted by another person.

701:4 Waiver. Applicants for certification and recertification shall submit such written waivers, releases, or consents as may be required to enable the Board or Certification Committee to have access to records involving conduct, past or present; and to enable the Board or Certification Committee to make such inquiry and investigation as deemed appropriate, including references or other items of information supplied to the Board by third parties.

In addition, a certified attorney whose certification has lapsed, has been terminated, or has not been renewed shall submit any waivers, releases, or consents as required for the release of information in his or her file, including information from third parties, to other certifying organizations with which the attorney holds a specialty certification.

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Regulations of the Board on Attorney Certification

Adopted: May 15, 1980

Effective: September 8, 1980

Amended Thru: November 2, 1992

Former Regulations Deleted and New Regulations

Adopted: June 28, 1996

Amended Thru: June 21, 2010

Appendix B: Court Rule 1:39

RULE 1:39. [LEGAL EDUCATION AND] SPECIALTY CERTIFICATION OF ATTORNEYS

An attorney of the State of New Jersey may be certified as a civil trial attorney, a criminal trial attorney, a matrimonial law attorney, [or] a workers' compensation law attorney, or a municipal court trial attorney, or in more than one designated area of practice, but only on establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill for each designated area of practice as set forth below.

To assist in the administration of the certification function, the Supreme Court shall establish, in accordance with these rules, a Board on Attorney Certification.

Note: Adopted January 26, 1979 to be effective April 1, 1979; amended May 15, 1980 to be effective September 8, 1980; amended June 28, 1996 to be effective September 1, 1996; amended 2010 to be effective 2010

1:39-1. Board on Attorney Certification

(a) **Appointment; Officers.** The Supreme Court shall appoint a Board on Attorney Certification consisting of not more than eleven members of the bar of the State of New Jersey. Members shall be appointed for three-year terms. No member who has served four full three-year terms successively shall be eligible for immediate appointment. Members appointed to fill unexpired terms may be reappointed to four successive terms. The Supreme Court shall annually designate a Chair and a Vice Chair from among the members of the Board. The Secretary of the Board of bar Examiners shall serve as Secretary. The Administrative Director of the Courts shall designate a member of the Administrative Director's staff with fiscal responsibilities to serve as Treasurer.

(b) **Quorum.** One more than half of the number of members shall constitute a quorum and all determinations shall be made by a majority of a quorum, except that a decision to grant certification or recertification shall have the concurrence of at least one more than half the members sitting on the Board.

(c) **Regulations.** The Board on Attorney Certification shall, subject to the prior approval of the Supreme Court, promulgate and amend Regulations governing the certification program and providing that the proceedings and files shall be confidential and shall not be disclosed to or attended by anyone except as authorized by these rules, the Regulations, or upon the direction of the Court.

(d) **Operations.** The Board shall, consistent with these rules and its Regulations, establish procedures, publish forms and maintain records as required for the conduct of the Board's operations and the certification of attorneys. The Board shall function as an appellate arm for the Certification Committee decisions. The Board will be responsible for the financial

and administrative operations of the certification program. The Board will maintain responsibility for policy, for making recommendations to the Court in respect of Rule and Regulation amendments, and [for accrediting continuing legal education courses] and for the general oversight of the functions of the Certification Committees.

(e) **Legal Education Activities.** [The Board shall cooperate with law schools in this State, the Institute for Continuing Legal Education, and other recognized continuing legal education sponsors in developing and maintaining courses, clinics and other offerings by such institutions to enhance the skills and increase the knowledge of attorneys who seek to be certified by the Supreme Court. The Board may also cooperate with other law schools, bar associations and agencies interested in legal education.] The Board, on a case-by-case basis, may determine whether courses taken, which have been approved for accreditation by the Board on Continuing Legal Education for the mandatory continuing legal education program, will qualify toward meeting the continuing education requirements related certification in a particular specialty. The Board may also determine, on a case by case basis, whether certain educational activities related to the area of specialty but not accredited under the mandatory continuing legal education program may be considered for accreditation toward the educational requirements of certification.

(f) **Reports.** Reports as to the activities of the Board may be submitted to the Supreme Court from time to time. [An annual report shall be submitted by February 15th of each year as to the status of the certification program.]

(g) **Staffing and Funding [Funds].** The day to day operations of the Board on Attorney Certification shall be carried out by a staff operating under the supervision of the Supreme Court Clerk's Office. Staff salaries, benefits, and operational costs shall be funded from fees imposed by this rule and Regulations. To the extent that the Board is not self-supporting, funds necessary for the operation of the certification program for attorneys shall be provided by the Administrative Office of the Courts.

(h) **Fees.** Each applicant for certification and recertification and each certified attorney shall pay required fees to the Secretary for the use of the Board. The fees shall be established in amounts to be set from time to time by the Board, subject to the approval of the Supreme Court, and, to the extent possible, so as to enable the program to be self-supporting.

(i) **Effect of Board Membership.** During service with the Board on Attorney Certification, no member shall apply for or be examined for certification in any of the designated areas of specialty in this State. A Certified Board Member may be recertified during the term of service on the Board.

(j). **Immunity.** Members of the Board on Attorney Certification and their lawfully appointed designees and staff shall be absolutely immune from suit based on their respective conduct in performing their official duties.

Note: Adopted January 26, 1979 to be effective April 1 1979; paragraphs (a), (b), (c), (d), (g), (h), and (i) January 1, 1987; paragraph (a) amended February 8, 1993 to be effective immediately; paragraphs (a), (b), (c), (d), (e), (g), (h), and (i) amended June 28, 1996 to be effective to be effective September 1, 1996; paragraphs (a), (b), (c), (d), (e), and (f) amended July 5, 2000 to be effective September 5, 2000; paragraphs (d), (e), (f), (g), (h), amended, new paragraph (j) adopted 2010 to be effective 2010.

1:39-1A. Certification Committees

(a) **Appointment; Officer.** The Supreme Court shall appoint a Civil Trial Law Committee, a Criminal Trial Law Committee, a Matrimonial Law Committee,[and] a Workers' Compensation Law Committee, and a Municipal Court Trial Law Committee. The Court shall appoint no fewer than [four] three and no more than eleven members of the bar to serve on each Attorney Certification Committee. Committee members shall be appointed for three-year terms. No member who has served four full three-year terms successively shall be eligible for immediate reappointment. Members appointed to fill unexpired terms may be reappointed to four successive full terms. The Supreme Court shall designate one member of each Committee to serve as Chair of that Committee. The Chairs shall serve[, ex officio,] as members of the Board on Continuing Legal Education and Attorney Certification.

(b) **Quorum.** For each Committee, one more than half the number of members shall constitute a quorum and all determinations shall be made by a majority of the quorum.

(c) **Operations.** The Committees shall, consistent with the Regulations of the Board, draft applications for certification. Review applications to determine eligibility for certification and recertification, create and grade examinations, and undertake such other tasks as may be assigned by the Board. In accordance with these Rules and the Board's Regulations, adverse decisions by a Certification Committee in respect of eligibility or examinations are reviewable by the Board or the Supreme Court.

(d) **Effect of Certification Committee Membership.** During service on a Certification Committee, no Committee member shall apply for or be examined for certification in this State. A Committee member who is not yet certified and who has served his or her full term on the Committee may apply for certification at the conclusion of his or her term on the Committee. Once making application, the former Committee member, if otherwise eligible for certification, will not have to take the appropriate certification examination. A previously-certified Committee member may be recertified during his or her term of service on the Committee. An attorney who sits on a Certification Committee who is not yet certified may offer a referral fee pursuant to RG. 402:6 so long as a referral fee is permitted.

(e). **Immunity.** Members of the Certification Committees and their lawfully appointed designees and staff shall be absolutely immune from suit based on their respective conduct in performing their official duties.

Note: Adopted June 28, 1996 to be effective September 1, 1997; paragraphs (a) and (c) amended and a new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended and new paragraph (e) adopted 2010 to be effective 2010.

1:39-2 . Eligibility. Subject to the specific requirements contained in the Regulations of the Board, an attorney shall be eligible to apply for certification in a designated area of practice on demonstrating to the Board on Attorney Certification the following:

(a) **Minimum Admission Period; Practice of Law.** [Membership] Applicants for certification must be members in good standing with a plenary license at the bar of the State of New Jersey for at least five years. Applicants for certification must be (1) engaged in the private practice of law, wherein the applicant represents and gives legal advice to clients, and maintains

the appropriate bank accounts pursuant to *Rule* 1:21-6; or (2) employed by State, county, or municipal government representing and giving legal advice to clients.

(b) **Professional Experience.** Extensive and substantial experience as an attorney in the designated area of practice as set forth in the Board's Regulations.

(c) **Professional Reputation.** The Board shall require each applicant to establish his or her professional fitness and competence in the designated area of practice. Pursuant to the Regulations of the Board, the applicant shall submit to the relevant Certification Committee the names of a specified number of peer references of whom the Committee may inquire with regard to the applicant's professional fitness and competence as an attorney within the designated area of practice. The Board or Committee may inquire of other attorneys or judges with respect to the professional qualifications and reputation of the applicant.

(d) **Educational Experience.** An applicant must demonstrate to the Board satisfactory and substantial educational involvement within the three years immediately preceding his or her application. The Board will evaluate the nature[, sponsorship, faculty,] and content [and duration] of educational involvements submitted by applicants on a case by case basis. The Board shall adopt Regulations governing the number of credits of continuing legal education required for certification [and the approval of continuing legal education courses, and shall impose such fees as it determines are appropriate, subject to the approval of the Supreme Court].

(e) **Ongoing Obligation.** Each applicant has an ongoing responsibility to report to the Board any malpractice actions brought, disciplinary complaints filed, fee arbitrations filed, or any discipline imposed on him or her during the pendency of the application. In addition, each applicant has an ongoing obligation to notify the Board during the pendency of the application process of any additional information that relates to the requirements for certification.

Note: Note: Adopted January 26, 1979 to be effective April 1 1979; paragraphs (a) amended, former paragraph (b) deleted and former paragraph (c) redesignated as (b) and amended, former paragraph (d) redesignated as (c) and amended, and new paragraph (d) adopted May 15, 1980 to be effective September 8, 1980; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (d) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(2) and (c), amended July 13, 1994 to be effective September 1, 1994; introduction and paragraphs (b), (c) and (d) amended June 28, 1996 to be effective September 1, 1996; corrective amendment to paragraph (c) adopted August 1, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), and (d) amended and new paragraph (e) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (c) and (d) amended 2010 to be effective 2010.

1:39-3. Written Examinations

An attorney shall be eligible for certification in a designated area of practice upon successful completion of a written examination on that area of practice within 18 months of the notification by the Board that the qualification requirements of R. 1:39-2 have been met. Admission to each written examination shall be upon payment of the examination fee to be set from time to time by the Board, subject to approval by the Supreme Court. The Board shall adopt Regulations governing the format and content of the examination and grading procedures to be followed.

Note: Former rule adopted January 26, 1979 to be effective April 1 1979; former rule deleted and present rule adopted May 15, 1980 to be effective September 8, 1980; amended June 28, 1996 to be effective to be effective September 1, 1996; corrective amendment adopted August 1, 1996 to be effective September 1, 1996; amended July 5, 2000 to be effective September 5, 2000.

1:39-4. Decision by Certification Committee or Board

(a) **Ineligible Applicants.** An applicant who is found ineligible to sit for the examination shall be notified of those areas in which he or she did not meet the program's requirements. An applicant may supplement his or her application to correct deficiencies, but such supplemental materials must be submitted within fourteen days of the date of notification of ineligibility. Should a Certification Committee determine that an applicant is ineligible to sit for the examination, that applicant has fourteen days to apply to the Board for de novo review pursuant to the Board's Regulations.

(b) **Duration of Eligibility; Qualified Applicants.** An applicant found eligible must successfully complete the examination requirements as found in Part Two and Three of the Board's Regulations within eighteen months of notification of eligibility to sit for the examination. If eligibility expires, the applicant must file a new application for certification. When an applicant has complied with the requirements of Rule 1:39-2 and 3 and the Board's Regulations, the Certification Committee shall forward the file to the Board, which shall review the file and make such further inquiry, pursuant to its Regulations, as it deems necessary and appropriate. Thereafter, the Board shall determine within a reasonable time whether the applicant is qualified for certification in the designated area of practice.

Note: Former rule adopted January 26, 1979 to be effective April 1 1979; former rule deleted and former Rule 1:39-5 redesignated Rule 1:39-4 and amended May 15, 1980 to be effective September 8, 1980; new paragraph (a) adopted and former rule amended and designated paragraph (b) June 28, 1996 to be effective to be effective September 1, 1996; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; rule title amended 2010 to be effective 2010.

1:39-5. Grant; Duration; Withholding of Certification

(a) **Grant of Certification.** If upon due consideration the Board determines that an applicant is qualified for certification as a civil or a criminal trial attorney, a matrimonial law attorney, [or] a workers' compensation law attorney, or a municipal court trial attorney, it shall so report to the Supreme Court, which shall direct the making of an appropriate entry on the roll of attorneys and shall cause to be issued an appropriate document attesting thereto.

(b) **Duration of Certification.** A grant of certification shall be effective for five years from the date of entry on the roll of attorneys. Subject to the approval of the Supreme Court, the Board may adopt regulations authorizing a tolling of the duration period of certification under specific circumstances, such as government employment or appointment to the judiciary.

(c) **Withholding of Certification.** If upon due consideration the Board determines that an applicant is not qualified for certification in a designated area of practice, it shall so notify the applicant, advising as to the procedure for reapplication in accordance with its regulations.

Note: Adopted January 26, 1979 as Rule 1:39-6 to be effective April 1 1979; redesignated Rule 1:39-5 and paragraphs (a) and (c) amended and paragraph (d) deleted May 15, 1980 to be effective September 8, 1980; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended June 28, 1996 to be effective to be effective September 1, 1996; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended 2010 to be effective 2010.

1:39-6. Effect of Certification

(a) **Not Exclusive.** The standards and systems adopted herein shall in no way limit the right of a certified attorney to practice law in any respect nor shall any attorney-at-law of this State be barred from engaging in a designated area of practice by reason of lack of eligibility or certification.

(b) **Use of Designation.** An attorney who has satisfied the requirements of this rule and who has been certified may make dignified use of the area of practice designation as provided in the Regulations of the Board.

(c) **Restrictions on Designation Use.** No use may be made of the designations set forth in the Regulations of the Board except as therein provided, nor may other words or combination of words be used by a certified attorney in place of such designations.

(d) **Division of Fees.** A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. The provisions of this paragraph shall not apply to matrimonial law matters that are referred to certified attorneys.

(e) **Obligation of Certified Attorneys.** A certified attorney is under a continuing obligation, during the duration of the certification period, to notify the Board of any malpractice action brought, fee arbitrations filed, disciplinary complaints filed, or discipline imposed.

Note: Adopted January 26, 1979 as Rule 1:39-7 to be effective April 1 1979; amended and redesignated Rule 1:39-6 May 15, 1980 to be effective September 8, 1980; amended December 11, 1983 to be effective January 3, 1984; paragraph (d) adopted November 1, 1895 to be effective January 2, 1986; paragraph (b) amended November 7, 1088 to be effective January 2, 1989; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), (c), and (d) amended June 28, 1996 to be effective to be effective September 1, 1996; new paragraph (e) adopted July 5, 2000 to be effective September 5, 2000.

1:39-7. Renewal of Certification

A member of the bar of this State who has been certified pursuant to these rules and the Regulations of the Board, may apply for a renewal of such certification during the last twelve months of the five year period for which the attorney had received certification. The application for renewal shall include information specified in the Regulations of the Board, which will set forth the substantive, professional fitness and educational requirements for recertification. The appropriate Certification Committee and the Board shall render a decision regarding the application for renewal of certification in the same manner as provided by these rules and Regulations for initial certification.

Note: Adopted January 26, 1979 as Rule 1:39-8 to be effective April 1 1979; amended and redesignated Rule 1:39-7 May 15, 1980 to be effective September 8, 1980; amended November 2, 1987 to be effective January 1, 1988; amended June 28, 1996 to be effective to be effective September 1, 1996; amended July 5, 2000 to be effective September 5, 2000; amended 2010 to be effective 2010.

1:39-8. Termination of Certification

(a) **Basis for Termination.** Certification may be terminated after a finding by the Board that a certified attorney no longer demonstrates continuing competence or has engaged in conduct or omissions to discharge responsibility that are not acceptable on the part of a certified attorney.

(b) **Procedures to Follow.** In all cases a complaint, notice, and opportunity to be heard shall be given in accordance, so far as applicable, with the rules and administrative guidelines governing plenary ethics hearings (Rule 1:20-3(h) to -3(m), -3(o)).

(c) **Effect of Determination of Unethical Conduct.** Whenever an attorney has been found guilty, either as an attorney or a judge, of unethical conduct in a disciplinary proceeding in this state resulting in public discipline, a copy of the decision or opinion in that matter shall be conclusive evidence of the facts established there. The sole issue to be determined by the Board shall be the extent of the sanction to be imposed. However, a respondent may introduce relevant evidence in mitigation that is not inconsistent with the essential facts established in the disciplinary decision or opinion.

(d) **Hearing Panels; Recommendation to Court.** In all cases hearings may be held before a panel of no less than three members of the Board, which shall render a report to the full Board. In appropriate circumstances, the matter may be referred for consideration to the District Ethics Committee. The Board shall recommend to the Supreme Court the sanction to be imposed, which may include either termination or [suspension] conditions imposed for a stated period. Should the Supreme Court approve the Board's recommendation to terminate certification, the Board shall notify other certifying agencies to which the attorney holds a certification of that termination.

(e) **Burden of Proofs; Effect of Termination.** In proceedings under this Rule, the presenter shall have the burden of proof. The respondent shall have the burden of proving all affirmative defenses, constitutional challenges, and mitigating circumstances, if any. The standard of proof for the presenter and the respondent shall be clear and convincing evidence on all issues. No person whose certification has been terminated pursuant to this Rule may be thereafter again certified except in accordance with the procedure set forth in Rule 1:39-1 to -9 and the Regulations of the Board.

(f) **Lapsing of Certification.** An attorney who allows his or her certification to lapse and thereafter seeks to be certified shall be required to comply with all of the requirements for making an initial application for certification. The Board shall notify other certifying organizations to which the certified attorney holds a certification that his or her certification by the Supreme Court has lapsed.

Note: Adopted January 26, 1979 as Rule 1:39-9 to be effective April 1 1979; amended and redesignated Rule 1:39-8 May 15, 1980 to be effective September 8, 1980; amended November 2, 1987 to be effective January 1, 1988; amended and rule designated as paragraphs (a), (b), (c), (d), and (e) June 28, 1996 to be effective to be effective September 1, 1996; paragraph (d) amended and new paragraph (e) adopted July 5, 2000 to be effective September 5, 2000; paragraph (d) amended 2010 to be effective 2010.

1:39-9. Review of Action of Board

Within 30 days after final action of the Board on Attorney Certification with respect to an application for certification, recertification, or termination of certification, an aggrieved member of the bar may seek review thereof by serving on the Secretary of the Board a notice of petition for review and by filing the original notice with the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and, if he or she is represented, the name and address of counsel. The notice shall designate the action of the Board sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. It shall be accompanied by the required filing fee. Thereafter, deposit for costs, filings and proceedings shall be as set forth in R. 1:19-8, Petitions for Review, except that the record on review shall be the Board's entire file with respect to the applicant or respondent as to whom review is sought.

The applicant shall not have access to the materials in the file submitted by another person.

Note: Adopted January 26, 1979 as Rule 1:39-10 to be effective April 1 1979; amended and redesignated Rule 1:39-9 May 15, 1980 to be effective September 8, 1980; amended November 2, 1997 to be effective January 1, 1988; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective to be effective September 1, 1996; paragraph (b) amended July 5, 2000 to be effective September 5, 2000.