

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 five Certification Committees, appointed pursuant to RG. 103:1. The remaining members, who shall not exceed 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 Supreme Court in respect of Rule and Regulation amendments; and on a case by case basis for determining whether courses taken by an attorney, which have been approved by the Board on Continuing Legal Education for the mandatory continuing legal education program, shall qualify toward meeting the continuing education requirements related to certification in a particular specialty. The Board may also determine accreditation, on a case by case basis, as to whether certain educational activities related to the area of specialty but not approved 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);
- 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. 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 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, the ten contested actions must include a minimum of 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.

(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; 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.

(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. 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;

- (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 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 testimony taken under this section must have been taken in substantial part by the applicant and no testimony may be submitted for consideration by more than one attorney on behalf of any one party. 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

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 significant 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 refusal.
- (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; trial-type hearings in municipal court, including plenary motions, motions to suppress, and Alcotest; 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. 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 or resolved prior to judgment or verdict, but only when the applicant completely prepared the case for trial by motion practice and extensive discovery.

(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, Workers' Compensation Law, and Municipal Court Law.**

(a) Each applicant shall submit as references the names and addresses of 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. 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 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.** An 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.

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 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 credits of continuing legal education programs in matrimonial law, which must include:

- (a) Not less than fifteen (15) of the required 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 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 credits must be satisfied by completion of approved educational programs in the area of evidence.
- (d) Not less than three (3) of the required 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.

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 in workers' compensation law, at least 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 in municipal court practice, at least twelve credits of their education requirement having been devoted to DWI and refusal 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

**205:6 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 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 Continuing Legal Education Obligations of Certified Attorneys.**

(a) **General Requirements.** Certified attorneys shall satisfy their continuing legal education obligation required under this Regulation by completing a minimum of sixty 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. Attorneys who are certified in more than one area of practice must fulfill a minimum of 90 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.

(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 and 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.

(c) **Matrimonial Law Requirements.** The certified 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 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 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 credits must be satisfied by completion of approved educational programs in the area of evidence.

(4) Not less than six (6) of the required 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) 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 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." 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 an amount determined by the Board, made payable to the Secretary, Board on Attorney Certification.

**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 refusal Statutes and Case Law.
2. Other Title 39 offenses.
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 offense legal issues.
16. Civil Penalties; other collateral consequences of pleas/convictions.
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.

(b)

(c)

**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, 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 as determined by 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 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;"
- (d) A certified workers' compensation attorney may use the designation "Certified by the Supreme Court of New Jersey as a Workers' Compensation Law Attorney;" and
- (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 DWI and refusal matters, drug possession, and disorderly and petty disorderly offenses;
- (ii) motion practice;
- (iii) plea and sentencing dispositions;
- (iv) municipal court appeals;
- (v) regular and consistent appearances in the municipal courts of New Jersey; and
- (vi) post conviction relief petitions.

(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. 205:6. 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 as determined by the Board in a check or money order made payable to the 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 RG. 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 employees

may, 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.

## **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: March 22, 2011

**Amendments to the following Regulations adopted July 20, 2011 to be effective September 1, 2011:** Regulations 102:1, 102:3, 103:1, 103:3, 202:1, 202:3, 203:1, 203:2, 203:3, 203:4 (new), 204:1, 205:1, 205:2, 205:3, 205:4, 205:5 (replaces former 205:5, here deleted), 205:6, 205:7 (deleted), 205:8 (deleted), 205:9 renumbered as 205:7, 206, 301:3, 301:6, 401:1, 402:2, 402:3, 402:7, 501:1, 501:2.