

NOTICE TO THE BAR

BOARD ON ATTORNEY CERTIFICATION - PROPOSED EXPANSION OF CERTIFICATION INTO TWO NEW AREAS: (1) TAX AND (2) RESIDENTIAL REAL ESTATE - REQUEST FOR COMMENTS

The Supreme Court requests comments on proposed amendments to the Regulations governing the Board on Attorney Certification. The attorney certification program helps connect litigants with attorneys who the New Jersey Supreme Court, through the Board on Attorney Certification, certifies as highly qualified specialists in their area of the law. To attain certification, attorneys must satisfy enumerated requirements, demonstrate substantial experience and exemplary reputation, and pass a written examination covering various aspects of practice in the designated specialty area. Currently, attorneys can be certified in one or more of the following five areas:

- civil trial law
- criminal trial law
- matrimonial law
- municipal court law
- workers' compensation law

Through the proposed regulation amendments, the Board on Attorney Certification would expand the specialty areas for certification from five to seven by adding tax court law and residential real estate law as new areas of certification.

In addition to expanding into these two new areas of certification, the proposed amendments also incorporate a variety of amendments to update the Board's regulations, in most cases to conform to current practice. Examples of such amendments include the removal of a reference to the bona fide office rule, which reflects an outdated requirement no longer applicable to attorneys (RG 202:3); the ability of applicants for civil trial certification to use one Special Civil Part matter as a contested action (trial) (RG 203:1); and specifying that an attorney whose certification lapsed or was terminated cannot

list that past certification and its duration in advertising or on letterhead (RG 601:3).

Attached to this notice is the memorandum from the Board on Attorney Certification proposing the two additional certification categories and the other amendments to the regulations. The Board's memo includes the proposed amendments and a short description explaining each proposed change and the reason for it.

Please send any comments on the proposed regulation amendments in writing by May 15, 2026 to:

Hon. Michael J. Blee, Acting Administrative Director
Administrative Office of the Courts
Attn: Proposed Amendments to Attorney Certification Regulations
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be e-mailed to Comments.Mailbox@njcourts.gov.

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. Comments are subject to public disclosure upon receipt.



Hon. Michael J. Blee, J.A.D.
Acting Administrative Director of the Courts

Dated: April 15, 2026

SUPREME COURT OF NEW JERSEY
BOARD ON ATTORNEY CERTIFICATION

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Memorandum in Support of Proposed Amendments to the
Regulations
of the Board on Attorney Certification

The Board on Attorney Certification (Board) has been working with representatives of the Ad Hoc Committee on the Tax Court and representatives of the New Jersey State Bar Association (NJSBA) Real Estate Section to draft standards for the proposed expansion of the certification program into two additional specialty areas: Tax Court Law and Residential Real Estate Law. This memorandum will examine the reasons in support of expansion and the relevant amendments proposed in furtherance of these goals. There are, in addition, several general housekeeping amendments, including, but not limited to, amendments conforming the existing language of a specific provision to current or differing Board practice or policy.

The Board believes that expansion of the certification program into the specialty areas of Tax Court Law and Residential Real Estate Law would further: 1) assist the public/legal consumer in becoming more knowledgeable in selecting an attorney capable and qualified to handle either a residential real estate matter or a legal matter or dispute in Tax Court, a specialized statutory court of limited subject matter jurisdiction; 2) improve the quality of advocacy, professionalism, and legal education in New Jersey; and 3) enhance the overall delivery of legal services to the public. Both Tax Court practice and residential real estate practice fit seamlessly within the framework of the existing certification program and its repeated expansion over the years, beyond the original two specialty areas of law (civil trial and criminal trial

law). If approved, the New Jersey certification program would grow from five to seven specialty areas of law.

Board certification of attorneys was conceived in response to the United States Supreme Court opinion in Bates v. State Board of Arizona, 433 U.S. 350 (1977), overturning limitations to lawyers' ability to advertise their legal services to the public through the yellow pages and other forms of advertising. While most attorneys rely on advertising their legal services, especially through social media, it is well settled that there exists no correlation between the size and effectiveness of an advertisement and the level of competency, experience, or skill of the attorney who so advertises. Specialty certification was championed by the American Bar Association to protect the public from misleading or uninformed legal advertising while not infringing on an attorney's first amendment right to advertise legal services to the public. The ABA created a model rule for specialty certification that many states and national certifying organizations relied on to create their own programs, including New Jersey.

For legal specialization to remain a valuable and effective service to the public, the legal consumer continuously must be made aware of the existence and significance of specialty certification. It is the Board's view that as the number of specialties increases, it is more likely than not that the public will come to know, consider, and rely on specialty certification in selecting an attorney. In addition, as the practice of law changes and impacts the existing certification areas, especially the trial related specialties, expansion into additional areas of law is the most advantageous way to grow the certification program. Finally, as certification programs continue to expand into new legal areas in the various state and national certification programs accredited by the American Bar Association, so should we continue to expand in New Jersey.

New Jersey certified its first group of attorneys in 1981. The program, about 45 years old, has been quite successful, maintaining about an 85% to 90% recertification rate. However, the largest certification "class" is the first one, and the attorneys in this group are either retiring or significantly limiting their litigation/specialty practice. With a greater number of certified attorneys retiring and a smaller number of attorneys able to meet the trial requirements

in the trial related specialty areas, expansion into new areas of law likely is the most effective way to preserve and grow New Jersey's certification program.

It is difficult to dispute the fact that the practice of law continues to become increasingly complex and specialized. De facto specialization results in attorneys developing a greater breadth of knowledge and skill in the area in which they predominantly practice. Because of this de facto specialization, many attorneys only have threshold skills in areas in which they do little or no work. While large institutional businesses and affluent legal consumers may have little difficulty in finding skilled legal representation, many New Jersey legal consumers have limited means available to ascertain those attorneys who are competent and qualified to handle tax or residential real estate matters. Moreover, solicitation of legal services by attorneys to unsophisticated and potentially unwary litigants is permitted in the Tax Court, especially related to local property taxes and state taxes. Legal consumers need some protection from misleading advertising and a viable barometer to measure legal skill, reputation, and competency. Certification in Tax Court Law and Residential Real Estate Law will assist in accomplishing these vital tasks. Attorney specialization has immense potential to benefit unsophisticated legal consumers who seek the services of a skilled and competent lawyer in this era of overwhelming social media advertising.

Proposed Certification in Tax Court Law. Taxes are considered essential to any civilized society; however, tax laws are almost always difficult to navigate, even for the sophisticated legal consumer. Therefore, it makes the utmost sense that Tax Court Law would be an excellent area for expansion of the New Jersey certification program, as those competent to handle these types of cases would benefit the unwary and unsophisticated legal consumer faced with a complex legal problem. The proposed certification in Tax Court Law would be bifurcated into two categories: State Tax and Local Property Tax. Generally, tax practitioners limit their practice to one or the other, rather than both, but there are exceptions. The requirements for each would differ, in view of the specific type of practice for each.

The Tax Court of New Jersey is a unique statutory trial court of limited subject matter jurisdiction. The jurisdiction extends to all matters involving

Local Property Tax (imposed by taxing districts of the 21 counties) and State Tax (imposed by the New Jersey Division of Taxation). The limited jurisdiction is gated with strict filing deadlines and time critical procedures, as well as complex substantive taxation matters. The Bench (by statute) and the Bar (in practice) are viewed as having special expertise in procedural intricacies as well as substantive tax law such that the State's higher courts often afford the findings of the Tax Court great deference. Thus, proceedings before the Tax Court have enhanced significance, and attorneys who regularly practice before it are especially qualified to handle matters of taxation in New Jersey and thus, would likely qualify for and benefit from a specialty certification.

The proposed regulations for a certification in Tax Court Law fulfill the goals of providing the public with certified attorneys who have devoted their practice in either, or both, Local Property Tax and State Tax before the Tax Court. An attorney seeking certification in Tax Court Law: a) have regularly appeared before a bench with special expertise in these subject matter areas and been held to the Tax Court's exacting standards; b) are experienced in handling Tax Court complaints with strict statutory deadlines; c) are familiar with complex State Tax and/or Local Property Tax issues; d) will confirm their familiarity and high level of competence in these areas by passing an exam that focuses on the appropriate subject matter; e) have significant experience with in-court proceedings dealing with these subjects; f) will be subject to peer review by their other tax court practitioners and judges; and g) have maintained a high level of competence by regularly attending focused continuing legal education programs. Both sub-categories of Tax Court certification would provide an opportunity for increased public confidence in selecting an attorney.

Permitting the certification of lawyers who practice before the New Jersey Tax Court would provide a dual benefit to the public and to the Tax Court. The public would benefit greatly by being able to readily locate certified attorneys experienced in the niche elements of a New Jersey Tax Court case, such as complex statutes, specific codes, the nuanced history of case law, and filing deadlines. This would serve a population in need of

efficient ways to address tax disputes, as New Jersey has some of the highest property taxes, personal income taxes, and corporate taxes in the nation. Unduly high or incorrect taxation may lead to disastrous impacts on the financial well-being of New Jersey's residents and institutions. Taxes are an integral factor in any New Jersey citizen's decision-making process, whether it relates to the purchase of a home, investment in real estate, or starting a business.

Qualified certified tax attorneys will also assist the Tax Court since their specialization and expertise will allow for a more efficient resolution of complex cases, which in turn, will save time and resources for both the New Jersey taxpayers and the court system. Complex matters typically involve novel issues such as valuation of nuclear power plants or other special-use properties; local property tax exemptions of entire industries such as healthcare; allocation of income to New Jersey by a multi-state foreign incorporated business; state tax audits of multibillion-dollar entities; charitable issues; and matters referred from the Superior Court as needing the Tax Court's expertise. Having a specialty certification that requires a high-level of subject matter expertise on those practitioners who seek it greatly serves a public that regularly encounters these scenarios, and the Tax Court in resolving such complex matters.

Proposed Certification in Residential Real Estate Law. Much of the argument regarding protection of the legal consumer and enhancement to the legal profession made above applies as well to this specialty area of law. The practice of residential real estate law has changed significantly over the years. Practitioners must keep current with numerous financial regulations, including those issued by the Consumer Financial Protection Bureau (currently in limbo), environmental compliance and enforcement requirements, and both federal and state taxation laws and regulations. In the current federal administration, these areas are in flux, requiring an attorney's continued attention to the ever-changing legal landscape. Often, a residential real estate closing is a legal consumer's first encounter with an attorney and likely represents the largest investment that consumer will make. Therefore, a certified specialty in residential real estate law will provide the public with the

ability to select an attorney that has a tested and peer reviewed level of competence in this area of law, which in turn will serve to engender a higher level of confidence in the legal profession. Consumers seeking a residential real estate lawyer often receive recommendations from members of the real estate industry who may or may not have the consumer's best interests at heart. An unsophisticated legal consumer may look to the most geographically convenient, cheapest, or social media-searched attorney, without having any independent benchmark of competence enabling the consumer to select a qualified real estate attorney. This is further exacerbated by the South Jersey practice, where consumers purchasing a home may be persuaded not to seek legal advice at all. Residential real estate law is not as easy as most practitioners believe it to be. Because of inexperience, an attorney handling a residential real estate closing can make significant errors that do not involve sufficient sums of money to compel the wronged consumer into filing a malpractice action or an ethics grievance. Specialty certification in residential real estate will meet the needs of legal consumers in view of the growing complexity in this practice area, as well as the ability to close on a home without being required to use legal counsel. Certification in this area will enhance the protection of legal consumers when making one of, if not the most significant investment in their lives. As important, specialty certification in residential real estate will raise the level of practice of the Real Estate Bar. Finally, the Board and the NJSBA real estate representatives began discussions on potential certification in commercial real estate and land use law as well and will continue those discussions and work toward that end.

Below are the proposed amendments to the Board's Regulations and a short description of/reason for the proposed change.

PART ONE – GENERAL REGULATIONS

REGULATION 101. Applicability and Citation of Regulations

RGs. 101:1; 101:2 – no change

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] **seven** 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. ... no change

102:3 Operation, Functions. ... no change

102:4 Fees, Funding. ... no change

102:5 Reports. The Board shall submit a[n annual] report on the status of the certification program to the Court [by February 15th of each year. Additional reports on] **regarding** the activities **and/or budget** of the Board [may be submitted to the Supreme Court] as [the Board] deem[s]**ed** necessary or appropriate.

102:6 Effect of Board Membership. ...no change

Comment: The above proposed amendments to RG 102:1 relate to an increase in the number of Certification Committees from five to seven in respect of the two proposed additional areas of certification and in RG. 102:5, conforming the language of this provision to actual practice. The Board submits reports to the Court as necessary as opposed to a specific time each year.

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] 7 members);
- c. Committee on Matrimonial Law (no more than [9] 7 members);
- d. Committee on Workers' Compensation Law (no more than [5]7 members);
[and]
- e. Committee on Municipal Court Law (no more than [9] 7 members)[.];
- f. Committee on Tax Court Law (no more than 7 members); and**
- g. Committee on Residential Real Estate Law (no more than 7 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 **if the area of certification is new.**

103:2 Quorum. ...no change

103:3 Operation, Function. ...no change

103:4 Effect of Committee Membership. ...no change

Comment: The proposed changes to RG. 103 is of a housekeeping nature and relates to either increasing or decreasing the maximum number of members who can sit on a Certification Committee and denoting Certification Committees for Tax Court Law and Residential Real Estate Law (RG. 103:1).

PART TWO -EXAMINATION ELIGIBILITY REQUIREMENTS

REGULATION 201. General Eligibility Requirements ... no change

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

202:1 Minimum Plenary Admission. ... no change

202:2 Ongoing Obligation. ... no change

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] **meets the requirements of** 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.

Comment: The proposed “housekeeping” amendment to RG. 202:3 removes reference to the bona fide office rule and refers instead to complying with Rule 1:21-1(a).

REGULATION 203. Professional Experience

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

(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. **No more than one Special Civil Part matter will qualify;** 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."

Comment: The change to this provision enables an applicant for civil trial certification to use one Special Civil part matter as a contested action (trial). With ADR, COVID delays, and judicial vacancies, applicants for civil trial certification are having some difficulty meeting the trial requirement. Allowing a Special Civil Part trial provides an additional option.

203:2 Matrimonial Law Requirements. ... no change

203:3 Workers' Compensation Law Requirements. ... no change

203:4 Municipal Court Law Requirements. ... no change

203:5 Tax Court Law Requirements. The applicant must establish that they:

(a) Devoted a significant portion of their professional time to the area of Tax Court Practice.

(b) For Local Property Tax Certification.

(1) Has had responsibility, in each of the three years preceding application, a minimum of fifty filed local property tax matters per year before the Tax Court, or a total of 500 local property tax matters before the Tax Court for the aggregate ten years leading to the application; and

(2) Has had responsibility, since plenary admission to the bar, for a minimum of five contested local property tax actions.

(c) For State Tax Certification.

(1) Has had responsibility, in each of the three years preceding application, a minimum of three filed state tax matters, or a total of 30 filed state tax matters before the Tax Court for the aggregate ten years leading to the application; and

(2) Has had responsibility, since plenary admission to the bar, for a minimum of five contested state tax actions.

(d) Definitions. For the purpose of meeting the requirements of this

Regulation, the following definitions apply:

(1) Filed matters. To qualify as a “filed matter,” a matter must be one in which a Tax Court complaint was filed and the attorney assisted in the preparation, prosecution, defense, or adjudication of said complaint. Matters handled in the small claims division of the Tax Court do not qualify as “filed matters.” A filed matter is considered a “litigated matter” for purposes of this RG. 203:5.

(2) Contested actions. To qualify as a “contested action,” a matter must be one in which only the trier of fact can decide the issue or issues presented, and is adversarial in nature. The types of matters that will qualify as contested actions are those that are adjudicable in Tax Court which include: submitted to the trier of fact for resolution either through trial (at least one trial day occurred, or the matter settled on the first day of trial) or through substantive motion practice (submitted and argued before the Tax Court). Matters handled in the small claims division of the Tax Court do not qualify as “contested actions.” Appeals from decisions of the Tax Court may also be considered “Contested actions.”

(i) Submission to trier of fact. It is acknowledged that the vast majority of contested actions before the Tax Court are resolved without the need for court intervention (i.e. through trial or substantive motion practice), therefore, the Board shall also consider cases that were settled or resolved prior to their submission to the trier of fact, and where the applicant prepared for the case(s), including but not limited to, extensive discovery, field inspections, use of third party experts, depositions, and mediation/settlement(s). The Board shall also consider the complexity of the matter(s) and case management by the Tax Court for purposes of RG. 203:5(d)(2).

(e) Required information. The applicant shall submit the following information on a form adopted by the Board:

(1) List of Filed matters in each of the three years preceding

application pursuant to RG.203:5 (b)(1) or (c)(1);

(2) Contested actions. The applicant shall present the following details on the contested actions submitted pursuant to RG. 203:5 (b)(2) or (c)(2):

i) caption and docket number of the case;

ii) date of disposition;

iii) name of Judge;

iv) names and addresses of all counsel;

v) nature of action or proceeding;

vi) issues in controversy;

vii) significant pre-trial or post-trial motions;

viii) significant discovery problems or techniques;

ix) number of trial or oral argument days;

x) point and status at which the proceedings were terminated;

xi) role in proceedings;

xii) issues resolved / outcome of proceedings; and,

xiii) appellate issues, if applicable; and any additional information the applicant may deem to be relevant.

Comment: The above provision details the substantive litigation requirements for Tax Court Law Certification. Tax Court certification is bifurcated into two distinct types of tax litigation sub-areas; tax practitioners generally handle either local property tax law or State tax law, and each sub-area has slightly different requirements. Tax Court Law-Local Property Tax certification requires the applicant to demonstrate 50 local property tax matters per year in the three years preceding the application or 500 local property tax matters over 10 years along with a minimum of five contested local property tax actions since plenary admission to the Bar. For Tax Court Law-State Tax certification,

an applicant must demonstrate a minimum of three filed state tax matters each year in the three preceding years or a total of 30 over ten years along with a minimum of five contested state tax actions. Definitions are provided for what is a filed matter (complaint filed and the applicant assisted in preparation, litigation and/or adjudication) and what is a contested action (submitted to the trier of fact or through trial or motion practice). In addition, time limitations and the information to be provided within the application are enumerated. The tax court practitioners on the ad hoc committee believe these substantive requirements are sufficient to enable the attorney certification applicant to demonstrate competence/skill in Tax Court Law.

203:6 Residential Real Estate Law Requirements. The applicant must establish that the applicant:

(a) Has devoted a substantial portion of the applicant's practice to the area of residential real estate;

(b) Has had primary responsibility within the past five years for a minimum of ten disputed or complex residential real estate transactions, including but not limited to issues relating to environmental, inspection, title, financing, zoning and/or homeowner association concerns; and

(c) Has resolved to completion a minimum of 140 other residential real estate transactions over the three years immediately preceding the application for certification. At least ten percent of these matters must involve a homeowner association and no more than 25 matters may be leasing transactions. At the discretion of the Certification Committee, commercial real estate transactions may be submitted in lieu of residential real estate matters. Generally, one commercial transaction will equate to two residential real estate transactions and no more than 20 commercial transactions can be used to meet this requirement.

(d) Definitions: For the purposes of these regulations, a residential real estate transaction refers to the purchase, sale, or lease of a one to four family residence.

(e) Time limitations. The ten complex or disputed transactions must

have been concluded within the five years preceding the application for certification. The 140 additional transactions can only go back three years prior to the submission of the certification application.

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

(1) Substantial involvement in transactions. The applicant shall present a brief summary of each of the 140 matters resolved within the three years immediately preceding the application as required in Section (c). These matters are exclusive of the ten complex/disputed transactions required by Section (b). The summary shall include the following:

i) name of parties/type of transaction;

ii) date of contract;

iii) date of closing;

iv) names and addresses of all counsel;

v) whether buyer or seller, sale or lease;

vi) property address;

vii) sale price;

viii) short description of issues resolved; and ix) any additional information the applicant may deem to be relevant.

(2) Applicant's ten complex/disputed residential real estate transactions. The applicant shall present the following details on the ten complex or disputed transactions submitted pursuant to Section (b):

i) name of parties/type of transaction;

ii) date of contract;

iii) date of closing;

iv) names and addresses of all counsel;

v) whether buyer or seller, sale or lease;

vi) property address;

vii) sale price;

viii) lengthy narrative of the handling of the transaction and a full description of complex issues encountered and resolved; and

ix) any additional information the applicant may deem to be relevant.

Comment: This provision details the substantive requirements for residential real estate certification. The applicant must demonstrate within the preceding five years a minimum of 10 disputed or complex residential real estate transactions, including but not limited to issues related to environment, inspection, title, financing, zoning and/or homeowner association concerns along with a list of a minimum of 140 other residential real estate transactions over the three preceding years, with ten percent of those matters in home owner association cases and no more than 25 leasing transactions. At the discretion of the Certification Committee, the applicant can use as an alternative no more than 20 commercial real estate matters in place of residential matters. A residential real estate transaction is specifically defined to refer to the purchase, sale, or lease of a one-to-four family residence. Time limitations and required information to be provided on the certification application are also enumerated. The real estate practitioners advising a small committee of the Board believe these requirements are sufficient to enable the attorney certification applicant to demonstrate competence/skill in residential real estate law.

REGULATION 204. Professional Reputation

204:1 Applicant's submission; Civil Trial Law, Criminal Trial Law, Matrimonial Law, Workers' Compensation Law, [and], Municipal Court Law, Tax Court Law and Residential Real Estate 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. **For Residential Real Estate Law only: all eight references may be from members of the New Jersey bar and all such references must have been substantially engaged in the practice of real estate law, five of which had transactions with the applicant within the past three years.**

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

(b) **Except for Residential Real Estate Law, [A]**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," **filed 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.

Comment: The proposed changes to RG. 204:1 detail the peer review requirements for the additional specialty areas. Generally, residential real estate transactions do not require an appearance in court before a judge. Therefore, unlike the other areas of certification, there is no requirement for judicial peer review.

204:2 Reference letters. ... no change

204:3 Board and Certification Committee inquiries. ... no change

REGULATION 205. Educational Experience

205:1 General Requirements. ... no change

205:2 Civil and Criminal Trial Law Requirements. ... no change

205:3 Matrimonial Law Requirements. ... no change

205:4 Workers' Compensation Law Requirements. ... no change

205:5 Municipal Court Law Requirements. ... no change

205:6 Tax Court Law Requirements. In addition to the general requirements of this Regulation, those seeking certification in Tax Court Law must demonstrate in the three years preceding the application, a minimum of thirty-six hours of continuing legal education courses in Tax Court related practice, at least four credits of their education requirement having been a presenter devoted to Tax Court related practice. Those courses taken in ethics/professional responsibility and professionalism in fulfilment of the mandatory continuing legal education requirement can be included the thirty-six credits required under this Regulation.

Comment: RG. 205-6 provides additional continuing legal education requirements for certification in Tax Court Law. The applicant must demonstrate 36 credit hours in Tax Court related practice, taken during the three years immediately preceding the application for certification. At least four credits must be as a presenter of education devoted to Tax Court related practice. Ethics and diversity courses will also count toward meeting the credit requirement. The total number of credits required for Tax Court Law is similar in the number of credits required for civil trial, criminal trial, workers compensation, and municipal court law certifications.

205:7 Residential Real Estate Law Requirements. In addition to the general requirements of this Regulation, those seeking certification in Residential Real Estate Law must demonstrate in the three years preceding the application, a minimum of forty-five credit hours of

continuing legal education courses in real estate related practice, at least half must be in residential real estate, four in land use law, four in environmental law, four in condominium law, and four in leasing law. Those courses taken in ethics/professional responsibility and professionalism in fulfilment of the mandatory continuing legal education requirement can be included in the forty-five credits required under this Regulation.

Comment: RG 205:7 details the continuing legal education requirement for certification in residential real estate law. The applicant must obtain 45 credits in real estate related practice in the three years preceding the application, at least half of which are in residential real estate, four credits in land use law, four credits in condominium law, four credits in environmental law, and four credits in leasing law. In addition, ethics and diversity courses will also count for credit toward meeting this requirement. The total number of credits required here is similar to the number of credits required for matrimonial law certification.

205:[6]8 Evaluation Criteria. ...Renumbering only

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

(a) to (c) ... no change

(d) Residential Real Estate Law requirements. The certified attorney must demonstrate that he or she in the three years preceding the application has completed no fewer than 75 hours of continuing legal education programs in real estate law, at least half must be in residential real estate, five in land use law, five in environmental law, five in condominium law, and five in leasing law. Those courses taken in ethics/professional responsibility and professionalism in fulfilment of the mandatory continuing legal education requirement can be included in the seventy-five credits required under this Regulation.

Comment: This provision details the educational requirements for attorneys to be recertified. The certified residential real estate law attorney will be required to obtain a minimum of 75 credits in real estate related law, at least half in

residential real estate law, five in land use law, five in environmental law, five in condominium law and five in leasing law. Ethics and diversity courses will also count toward the credits required to be recertified.

REGULATION 206. Application Fee ...no change

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

207:1 Perfection of Application. ... no change

207:2 Notification. ... no change

207:3 Eligibility; duration. ... no change

207:4 Ineligibility; review by Board. ... no change

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. **The Board administers the examination each year for those applicants deemed eligible to sit for the examination. However, the Board reserves the right to hold an examination every other year if the applicant pool in the certification area is below two examinees.**

Comment: This amendment enables the Board to choose to offer an examination every other year if there are less than two applicants sitting for a certification examination. The Board and the Certification Committees acknowledge the great deal of work needed to create a new examination each year and believe if there are too few sitting for the exam, they should have the option to offer the exam every other year when there is only one examinee.

301:2 Application Form. ... no change

301:3 Examination Fee. ... no change

301:4 Time and Place. ... no change

301:5 Examination Format. ... no change

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:

A through E ... no change

F. TAX COURT LAW

1. Local Property Tax Certification:

(i) Rules of Professional Conduct

(ii) Jurisdiction (including statute of limitations), Service of Process, and Procedure before the Tax Court

(iii) Rules Governing Practice in Tax Court, Part VIII, Rule 8:1 to 8:13

(iv) Rules of Evidence

(v) Pre-Trial Discovery (vi) Presumptions and Burden of Proof / "Chapter 91" Issues

(vii) Approaches to Value and Valuation Issues including Chapter 123 Corridor

(viii) Exemptions

(ix) Pre-trial Procedure

(x) Pre-and Post-trial Motions

(xi) Tax Court Judgments (including application of the "Freeze Act")

(xii) County/School Aid Equalization Tables

(xiii) Appeals of Decisions of the Tax Court

(xiv) All other substantive, evidential and procedural areas of law

within the jurisdiction of the Tax Court

2. State Tax Certification

(i) Rules of Professional Conduct

(ii) Jurisdiction, Service of Process, and Procedure before the Tax Court

(iii) Rules Governing Practice in Tax Court, Part VIII, Rule 8:1 to 8:13

(iv) Rules of Evidence

(v) Pre-Trial Discovery

(vi) Gross Income Tax

(vii) Corporate Income Tax

(viii) Sales and Use Tax

(ix) Miscellaneous Excise/Death Taxes

(x) Pre-trial Procedure

(xi) Pre-and Post-trial Motions

(xii) Tax Court Judgments

(xiii) Appeals of Decisions of the Tax Court

(xiv) All other substantive, evidential and procedural areas of law within the jurisdiction of the Tax Court

G. RESIDENTIAL REAL ESTATE LAW

1. Contract Law

2. Title Insurance

3. Surveys

4. Leasing

5. Real Estate Financing (Mortgage Law)

6. Land Use

7. Flood Zones, Wetlands, Tidelands

8. Landlord Tenant Law

9. Property/Deed Recording Laws

10. Adverse Possession and Eminent Domain

11. Condominium and Coop Law

12. Transfer Tax and Bulk Sales Requirements

13. Environmental Testing

14. Impact of Foreclosure and Bankruptcy

15. Ethics/Professionalism/Diversity, Inclusion and Elimination of Bias

16. Conflicts of Interest

17. Rules of Professional Conduct

Comment: RG. 301:6 F and G provide the list of potential examination topics for certification in Tax Court law and residential real estate law.

REGULATION 302. Grading and Distribution of Results

302:1 Grading Procedures. ... no change

302:2 Notification to Applicant. ... no change

302:3 Failing Applicants; Reexamination; Review of Examination. ... no change

PART FOUR - CERTIFICATION OF APPLICANT

REGULATION 401. Report of Determination

401:1 Grant of Certification. ... no change

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. **A formal brief and relevant documentation should be submitted along with the notice. If the Supreme Court grants the petition for review, it will render a final determination in due course.** [Thereafter, the proceedings shall be as set forth in Rule 1:19-8, Petitions for Review.]

Comment: The proposed amendment to RG. 401:2 conforms this provision to existing practice.

REGULATION 402. Consequences of Certification

402:1 Duration of Certification. ...no change

402:2 Annual Fee. ... no change

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[.]”;

(f) A certified Tax Court law attorney may use the designation “Certified by the Supreme Court of New Jersey as a Tax Court Law Attorney - Local Property Tax,” or “Certified by the Supreme Court of New Jersey as a Tax Court Law Attorney - State Tax,” or both; and

(g) A certified Residential Real Estate law attorney may use the designation “Certified by the Supreme Court of New Jersey as a Residential Real Estate Law 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.

Comment: RG 402:3 is amended to provide the manner by which a certified attorney can denote his or her certification in either Tax Court Law (Local Property Tax or State Tax) or Residential Real Estate Law.

402:4 Use of Approved Logo. ... no change

402:5 Violations; Sanctions. ... no change

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. **The fee division shall be put in writing by the certified attorney if the referring attorney requests it.** Pursuant to Rule 1:39-6(d), referral fees shall not be made by certified attorneys in matrimonial matters **or residential real estate matters.**

402:7 Obligations of Certified Attorneys. ... no change

Comment: RG. 402:6 provides that if a referring attorney requests that the agreed upon division of fee to be placed in writing, the certified attorney shall do so. Over the years, there have been complaints from attorneys that a certified attorney failed to honor a verbal referral fee agreement. The Board can do no more than suggest the attorney contact the Office of Attorney Ethics. By encouraging, but not requiring, that the fee arrangement be committed to writing upon request of the referring attorney, this may be a way to better protect the referring attorney. In addition, The Board determined that in view of the minimal fees involved in residential real estate transactions, residential real estate law certified attorneys will not be able to forward fees.

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] **two** 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) and (3) ... no change

Comment: The proposed change to RG 501:1 (a)(1) conforms the existing language to current practice, moving required trials over the five-year certification period down from five to two, more in line with the contemporary civil trial practice.

- (b) **Criminal Trial Law.** ... no change
- (c) **Matrimonial Law.** ... no change
- (d) **Workers' Compensation Law.** ... no change
- (e) **Municipal Court Law.** ... no change

(f) Tax Court Law

(1) Local Property Tax. The Board views substantial involvement in Tax Court law as possessing some, if not all, of the following characteristics:

(i) Has had responsibility in the five years preceding recertification, for a minimum of fifty filed local property tax matters.

(ii) Regular appearances in Tax Court.

(iii) Pursuant to RG. 205:8, applicant must show 60 hours of CLE devoted to Tax Court practice for the aggregate five years leading to recertification.

(2) State Tax. The Board views substantial involvement in Tax Court law as possessing some, if not all, of the following characteristics:

(i) Has had responsibility in the five years preceding

recertification, for a minimum of three filed state tax matters.

(ii) Regular appearances in Tax Court.

(iii) Pursuant to RG. 205:8, applicant must show 60 hours of CLE devoted to Tax Court practice for the aggregate five years leading to recertification.

(3) 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.

(4) If the applicant cannot demonstrate that they engage in more than a minimal portion of their practice on Tax Court law matters, without explanation, the applicant will not be recertified. They 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.

(g) Residential Real Estate Law

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

(i) review and/or drafting of residential real estate contracts;

(ii) negotiation of applicable agreement/contract terms;

(iii) resolving all property inspection issues;

(iv) securing and reviewing title;

(v) overseeing the residential closing process; and

(vi) handling other real estate matters such as commercial real estate, land use/zoning, environmental issues, tax appeals, Orders to Show Cause, and litigation, including landlord/tenant.

(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 engages in more than a minimal portion of his or her practice on residential real estate 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.

Comment: Subsections (f) and (g) provide for the recertification requirements for Tax Court Law and Residential Real Estate Law, mirroring requirements for original certification and the standard requirements for all areas for recertification. Both the Tax Court practitioners and real estate practitioners working with the Board were of the view that the proposed requirements demonstrate substantial involvement in the certification area sufficient for

recertification.

501:2 Fee. ... no change

501:3 Supplemental Information; Disposition. ... no change

501:4 [Conditional] Recertification With Conditions.

Comment: Housekeeping change with title only conforming to practice

501:5 Withhold Recertification; Review. ... no change

PART SIX - INELIGIBILITY & TERMINATION; LAPSED CERTIFICATION

601:1 Ineligible and Inactive Certified Attorneys.

(a) No change

(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; or because

(3) **they have moved and are primarily practicing law out-of-state; however, this status can only be claimed for a period of no more than ten years. If the attorney has not returned to practice in New Jersey within two consecutive recertification period, his or her certification will lapse**; may, on written notice to the Board, elect to transfer their certifications [to inactive status] **into abeyance** 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] **in abeyance** 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) No change

(d) An attorney who has requested abeyance because of moving and primarily practicing law out-of-state may only remain in abeyance for two consecutive recertification periods. If he or she does not return to the active practice of law in New Jersey after that time, his or her certification status will lapse.

601:2 Termination of Certification. ... no change

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.

To ensure that the public is not misled, an attorney whose certification has lapsed or been terminated may not refer to his or her past certification status on the attorney's letterhead or in advertisements.

Comment: The proposed amendments to RG. 601:1 affords an additional reason to place a certification in abeyance: attorneys who briefly move to another jurisdiction and practice full-time in that jurisdiction. The attorney will have two certification periods (10 years) to return to practice in New Jersey, otherwise their certification will lapse. This provision is in response to the seemingly increased transience of attorneys since COVID. In addition, RG. 601:3 provides additional language prohibiting lapsed and terminated certified attorneys from denoting in advertising or on letterhead the years of certification. The Board's concern here is to avoid any misinterpretation by the legal consumer of whether the attorney is certified. The Board is of the view that this information is better suited for a CV or resume, not legal advertising.

PART SEVEN – CONFIDENTIALITY

REGULATION 701. Confidentiality ... no change

CONCLUSION

The Board's commitment to the certification program remains strong and vigilant. It is the Board's view that legal specialization, including the expansion of the current program into Residential Real Estate Law and Tax Court Law advances the quality of "lawyering" and legal service in New Jersey. Certification serves the public by enabling consumers to identify the appropriate attorney to meet their needs, one who has a peer reviewed and tested level of proficiency in the certified specialty. Specialty certification effectively addresses de facto specialization, results in increased professionalism among attorneys, and assists the Bar or other professionals with identifying qualified attorneys for referral of specialized matters. Expansion of the certification program into additional areas of law will serve to ensure lawyers maintain commitment to the practice of their specialty and advance their knowledge, skill, and expertise through continuing legal education in their specialty field. The proposed regulatory requirements for both Tax Court Law and Residential Real Estate Law were crafted with the assistance of seasoned practitioners in these areas of law. The Board trusts that the recommendations made regarding the substantive requirements for each specialty area will lead to successful, competent, skilled, ethical, and qualified certified attorneys in each of these proposed areas of certification.

The Board requests the Court approve the proposed amendments to its Regulations, including approving specialty certification in Residential Real Estate Law and Tax Court law (with the subcategories of Local Property Tax or State Tax). There will need to be corresponding amendments to Rule 1:39 should expansion be approved. Further, if the Board's recommendations are published for comment, it is the Board's position that any potential rule amendments await the conclusion of that process.

Respectfully submitted,

The Board on Attorney Certification

Wendy L. Weiss, Board Counsel