

Memo: Civil Trial Advocacy Examination Information
From: Gwen Arcangelo, Assistant Director

One of the biggest concerns for our applicants is having to take another examination and many of you swore you would never do that again after your bar examination. Suddenly you find yourself in that scenario. The information below we hope will answer your questions about our examination and address your concerns about this step of the certification process.

FORMAT:

The examination is divided into two 3 hour sessions given on a Saturday or Sunday. It consists of hypothetical cases and fact patterns which contain a series of questions that require knowledge of Trial Practice, Evidence and Ethics. The questions could be any combination of Essay and Multiple Choice. The questions are geared to evaluate basic knowledge of the usual legal procedures, core substantive law and trial ability that is common to specialists in the area of civil trial law. It is not designed to be a bar or law school type of examination.

TIMING:

The examination is given twice a year. Registration material for an examination is sent two months prior to the examination date. You will automatically receive registration material before every examination until you have actually taken and passed one (contingent upon file eligibility). There is no need to contact our office if you cannot take a particular examination.

LOCATION:

Whenever possible we arrange for local sites to administer the examination. Therefore, the examination sites rotate to accommodate most applicants. If there is a site that you would like to suggest for an upcoming examination, I will do everything I can to accommodate your suggestion. Please Note: examination administration sites cannot be added for an examination after the registration materials have been sent out, so please contact me as early as possible with your suggestions.

CONTACT:

If you have any additional questions, please call me at **508-384-6565** or email me at **garcangelo@nbtalawyers.org**. I look forward to helping you complete our examination requirement.

EXAMINEE INFORMATION DOCUMENT

This document is designed to assist eligible applicants prepare for an examination administered by the National Board of Trial Advocacy (NBTA). For the requirements of each specialty area, please visit www.nbtalawyers.org and click “For Attorneys” and dropdown to “Standards” and “Application & Exam Information”.

The Examination Specifications provide a list of practice related information/skills that relate to the purpose of certification in the specialty area. **To view “Specifications” please refer to pages 6-8 of this packet.**

Please note that passage of the examination is one step in the application process to become a certified specialist.

Step 1 Complete NBTA’s online application in its entirety to become eligible for one of the next NBTA examinations. The following is a list of the application requirements: CLE, Legal Writing, Disclosure of Conduct, Substantial Involvement, Contested Matters, History of Professional Conduct, Application Agreement, and References.

Step 2 Applicant registers and sits for a Spring or Fall NBTA examination administration. The examination must be successfully completed within two years from the online application submission date. E.g. If the application is received 10/20/2016, it must be completed by 10/19/2018.

Step 3 Successful applicants are sent notice of passage of examination.

Step 4 All requirements are satisfied and fees are paid. Applicant is certified.

Registration Procedures:

- If you are eligible to sit for an up-coming examination, you will be sent an examination registration form, two months prior to each examination administration date.
- If you wish to use a Laptop Computer, NBTA will supply you with a USB flash drive to save your essay answers. Please contact Gwen Arcangelo (garcangelo@nbtalawyers.org) at the NBTA for additional information.
- Testing Accommodations are available to qualified individuals. Please contact Gwen Arcangelo (garcangelo@nbtalawyers.org) at the NBTA for additional information.
- You must choose an examination site from a list provided to you. Sites rotate to accommodate most applicants’ geographic area. However, examination sites are limited to those locations offered for a given examination administration.

- Your registration form must be received by NBTA by the deadline on the form along with payment of the \$400 examination fee. No faxed registrations are accepted without the \$400 fee.
- Registration form and fee are NOT accepted after the deadline. You must re-register for the next examination administration and pay the \$400 examination fee.
- If you cancel less than 24 hours prior to the examination day, you will be charged a \$150.00 “No Show” fee. This fee is due before any certification is granted.

Examination Administration:

- The purpose of the examination is to verify your basic knowledge of the usual legal procedures, core substantive law and ability that is common to specialists in the area of law tested. The areas examined are listed in the individual Examination Specifications for each area of law. **To view the “Specifications” please refer to Pages 6-8 of this packet.**
- The examination consists of 60 multiple choice questions and 3 hours of essay questions. **To see the “Examination Information” please refer to page 1 of this packet.**
- The examination is 6 hours long and begins promptly at 8:30 a.m. and ends at 11:30 a.m. for a lunch break. It begins promptly at 12:30 p.m. and ends at 3:30 p.m.
- At the start of the examination, you will be asked to show a photograph ID (Drivers’ license, passport, or an employment badge with a photograph) to verify your identity. You must have a photo ID on your person at all times during the examination.
- Examination questions are geared toward generally applicable legal principles. If your state has a particular legal rule which is important to your answer, please indicate what state you are from and describe the rule.
- You are permitted to use designated reference materials during the examination, e.g. the Federal Rules of Evidence, the ABA Model Code of Professional Responsibility, the ABA Model Rules of Professional Conduct, etc. Please check the specific materials permitted by the individual area of law. **See “Reference Materials” on the Exam Facts page 10 of this packet.**
- You will receive an examination number that must be written on every sheet of paper used for answers. Names must NOT be written on any part of the examination. The assigned number provides anonymity. You must print your

examination number on each answer to an essay question in the appropriate upper right hand corner of each page.

- Start an answer to each section of questions on a new sheet of paper. On the last page of each section write "END."
- You must supply your own paper and pens. These will NOT be provided by NBTA.
- Multiple choice questions must be answered on the Multiple Choice Answer Form provided. You must write your examination number in the upper right hand corner of the form.
- You must keep track of time. Remain alert to the passage of time. Timing devices brought into the exam must be absolutely silent so as not to disturb others.
- Do not write on both sides of the page for essay questions.
- Write legibly- if a grader cannot read the answer you will not receive credit. Essay answers written in pencil are not acceptable.
- You will NOT be granted extra time. If you run out of time you will not be able to complete that portion of the examination.
- All examination questions and answers are collected at the end of the individual session.
- Examination materials may NOT be kept and are NOT to leave the examination room.

Grading and Review:

- A passing score is 75%.
- Approximately eight weeks after the administration of that examination's date, you will be notified of the result.
- Prior to the release of your results, all failing examinations have already been granted an automatic appeal to the members of the Examination Committee. Members of this committee review the failing examinations and make a final determination. Results are released only after all reviews have been completed.
- Your results will be mailed marked "Confidential." However, if you wish the result letter to be sent to an alternate address, notify Gwen Arcangelo (garcangelo@nbtalawyers.org) at the NBTA in writing to provide this information.

- The decision of the Examination Committee is final.
- You may retake the examination one time (contingent upon file eligibility). Upon a second failure you are procedurally denied and must wait a calendar year prior to re-applying to NBTA to sit for the examination.
- Re-applications require that a new application be opened and all standards met and documented. The examination must be re-taken in its entirety.

Please direct any questions about the examination to the following:

**Gwen Arcangelo, NBTA Assistant Director
850 Franklin Street, Suite 8
Wrentham, MA 02093
508.384.6565 (Phone) / 508.384.8223 (Fax)
garcangelo@nbtalawyers.org**

Specifications for the National Board of Trial Advocacy Civil Trial Certification Examination (Rev. April 27, 2019)

Purpose of the Examination: The Civil Trial Examination is designed to verify the applicant's basic knowledge of the usual legal procedure, core substantive law and trial ability that is common to specialists in the area of Civil Trial Law. Civil Trial Law is the practice of law dealing with litigation of civil matters in all areas of substantive law before state courts and federal courts. In addition to the pre-trial and the trial process civil trial includes evaluating, handling, and resolving civil matters prior to the initiation of a law suit as well as the appellate processes.

An applicant is expected to demonstrate the ability to identify the issues, state and apply the applicable law, analyze and apply the law to the facts. It is recognized that the subject areas below may overlap, which may require incorporation of more than one substantive or procedural area in Civil Trial Law. The order of the subject areas does not reflect their relative importance, nor does the sequence represent an implied order of their application in practice.

Subject Area 1: Professional Responsibility

- 1.1 Ethical duties to client, opposing counsel and the Court / attorney as witness
- 1.2 Basis of sanctions
- 1.3 Fee agreements / bases for fees / declining terminating representation
- 1.4 Prohibited referrals and inducements / contact with prospective clients
- 1.5 Dual representation / conflicts of interest / independent professional judgment
- 1.6 Unauthorized practice of law / restrictions on right to practice law
- 1.7 Client property
- 1.8 Dealing with an unrepresented person
- 1.9 Dealing with paralegals and other non-attorney staff
- 1.10 Trial publicity

Subject Area 2: Evaluation, Remedies and Defenses

- 2.1 Causes of action and defenses for commercial and contract disputes
- 2.2 Causes of action and defenses for business torts
- 2.3 Causes of action and defenses for personal injury torts
- 2.4 Relevant time limits
- 2.5 Identification of relevant economic issues including insurance coverage

Subject Area 3: Jurisdiction, Venue and Joinder

- 3.1 Subject matter jurisdiction
- 3.2 Jurisdiction over parties
- 3.3 Jurisdiction over property
- 3.4 Service of process and notice
- 3.5 Venue, forum non-conveniens, and transfer
- 3.6 Joinder of parties and claims
- 3.7 Interpleader
- 3.8 Removal and remand
- 3.9 Choice of law issues

Subject Area 4: Practice and Procedures

- 4.1 Pleading requirements and deadlines

- 4.2 Discovery (see Subject Area 7 below)
- 4.3 Federal Rules of Civil Procedure
- 4.4 Federal procedure for pretrial discovery plan, scheduling conference and order
- 4.5 Rules governing motions and briefs
- 4.6 Rule 12 motions
- 4.7 Judicial findings and conclusions
- 4.8 Directed verdicts and dismissal of cases
- 4.9 Summary judgments and other dispositive adjudication without trial
- 4.10 Settlements / judgments / subrogation / collateral source
- 4.11 Emergency and injunctive relief
- 4.12 Voir dire
- 4.13 Opening statements / closing arguments
- 4.14 Jury instructions
- 4.15 Post-trial motions
- 4.16 Appealability and review / making a record
- 4.17 Federal Arbitration Act

Subject Area 5: Evidence

- 5.1 Authentication and introduction of evidence / mode and order / relevance and probative value
- 5.2 Relevance exclusions, including subsequent remedial measures, settlement offers and compromise, payment of medical expenses, plea negotiations, etc.
- 5.3 Character evidence and related concepts
- 5.4 Proper use of demonstrative and other trial exhibits / writings, recordings, photographs, experimental evidence and the optional completeness rule
- 5.5 Qualification of expert and lay witnesses / expert and lay testimony and opinions / scientific evidence
- 5.6 Judicial notice
- 5.7 Privileges and other exclusionary policies, including spousal immunity and marital communications, attorney-client, work product, etc.
- 5.8 Refreshing recollection and impeachment of witnesses
- 5.9 Hearsay and exceptions (see Subject Area 6 below)
- 5.10 Federal Rules of Evidence

Subject Area 6: Hearsay/Exceptions/Exemptions (Non-Hearsay)

- 6.1 Definition
- 6.2 Present sense impressions and excited utterances
- 6.3 Statements of mental, emotional, or physical condition
- 6.4 Statements for purposes of medical diagnosis and treatment
- 6.5 Past recollection recorded
- 6.6 Business records
- 6.7 Public records and reports
- 6.8 Learned treatises
- 6.9 Former testimony, depositions
- 6.10 Other exceptions to the hearsay rule
- 6.11 Prior statements by witnesses
- 6.12 Admissions by party opponent

Subject Area 7: Discovery

- 7.1 Scope of discovery and federal automatic disclosure requirements
- 7.2 Timing of and limitations on discovery

- 7.3 Expert designations, reports and privileges
- 7.4 Deposition practice and procedure
- 7.5 Interrogatories, requests for production and requests for admission.
- 7.6 Physical and mental examinations
- 7.7 Sanctions
- 7.8 Non-party subpoena practice
- 7.9 Federal rules governing electronic discovery

Examination Waiver Information

**To: AAML Fellows
Arizona - Civil & Criminal Applicants,
Florida - Civil, Criminal and Family Applicants,
Minnesota - Civil Applicants,
New Jersey – Civil*, Criminal* and Family* Applicants,
New Mexico - Civil Applicants and
Texas – Civil** & Criminal Applicants**

***In addition to taking New Jersey's Examination, NBTA's New Jersey Applicants must also take the Ethics section of the NBTA Exam.**

****We currently recognize both the Texas (TBLS) Personal Injury Trial Law Examination and the Civil Trial Law Examination toward our Civil Certification.**

One important requirement of the National Board of Trial Advocacy certification process is passing a written examination in the area of certification. The purpose of the examination is to test your proficiency, knowledge, and experience in trial law. Since your state board examination's test those same attributes, the NBTA recognizes the examinations from the states/organizations listed above in lieu of taking our examination.

To obtain a waiver from the NBTA examination requirement, please contact the Executive Director from the state agency or organization by which you are certified and send me a letter that confirms the following:

- 1) that you have taken and passed the state or organization certification examination.
- 2) that you are currently certified, have continuously maintained your certification, and are in good standing with that agency.

Please feel free to call me at **508-384-6565** or email **Gwen Arcangelo** at **garcangelo@nbtalawyers.org** with any questions you may have.

CERTIFICATION EXAMINATION FACTS NATIONAL BOARD OF TRIAL ADVOCACY

WHAT

Examination in all specialty areas of law is designed to verify an applicant's knowledge in the usual procedures, ethical considerations and substantive law that should be common to specialists in the area of law.

ELIGIBILITY

An applicant must satisfy the requirements for eligibility in the specialty area and must complete the online application in its entirety prior to sitting for the examination. The initial application must be received 45 days prior to the examination dates for the Spring or Fall Examination administration. (I.e. for an April 16th examination the application must be received and processed by March 1st)

REGISTRATION PROCEDURES

Applicants choose an examination site located in their geographic area from a list provided by NBTA. Applicants will receive an examination number that **MUST** be used on all examination materials.

EXAMINATION FORMAT

The examination is a six hour session (8:30 a.m. - 11:30a.m. and 12:30p.m. – 3:30p.m.) that includes both essay and multiple choice questions. There are no optional questions. Applicants must supply paper and pens, however a form will be provided for the multiple choice questions. Use of the Internet by laptop takers is strictly forbidden.

FEE

\$400.00 for both writing and laptop PC (in addition to the application fee).
Cancellations 24 hours or less are assessed a \$150.00 "No show" fee.

REFERENCE MATERIALS

The Federal Rules of Evidence and either the ABA Model Code of Professional Responsibility, Model Rules of Professional Conduct, or the ethics rules in effect in the applicant's state and if applicable the Social Security Act, Regulations and West's Federal Social Security Laws. Civil Practice examinees may also bring the Federal Rules of Civil Procedure.

SCORING

75% is a passing score. Examination results (pass or fail) will be released 8 weeks after the administration of the examination.

QUESTIONS

Contact Gwen Arcangelo, Assistant Director, E-mail – garcangelo@nbtalawyers.org, Phone 508-384-6565 or NBTA, 850 Franklin Street, Suite 8, Wrentham, MA 02093

CIVIL EXAMINATION MANUAL (Revised 9/2016)

Please note: your demonstration of knowledge of EVIDENCE and ETHICS are important.

Failure of the ETHICS portion will result in failure of the examination.

The following are samples of the multiple choice portion of the examination:

CIVIL EVIDENCE

1. During a break in settlement negotiations in a negligence case, the plaintiff and defendant, not in the presence of their attorneys, are having a cordial conversation. The defendant says to the plaintiff, "I'm sorry about the accident. I should have been more careful." Settlement negotiations are not successful and the case is on trial. During the plaintiff's direct testimony, his attorney asks him about the conversation he had with the defendant while the parties were engaged in settlement negotiations. Defendant's counsel objects.

Which of the following best reflects the proper ruling on the objection?

Objection-

- A. **sustained because statements made during settlement negotiations are not admissible.**
- B. **sustained because the statements made by plaintiff are irrelevant to the case.**
- C. **overruled because defendant's statement was an admission against interest.**
- D. **overruled because neither party's attorney was present during the conversation.**

ANSWER: A

2. This is a product liability case on trial in federal district court. Plaintiff is suing for property damage and economic loss because of the malfunction of computer equipment sold to it by defendant. Defendant claims that plaintiff expressly assumed the risk. During its case-in-chief defendant offers into evidence a shipping invoice, signed by plaintiff's receiving agent, which contains the following language:

"BUYER agrees to buy said goods with the full understanding that it will be solely responsible for any losses or consequential damages caused by said goods.

BUYER ACKNOWLEDGES THAT IT HAS FULLY EXAMINED THE GOODS AND IS FULLY AWARE OF ANY DEFECTS IN WORKMANSHIP."

Is the exhibit admissible?

- A. No, because the invoice is hearsay.**
- B. Yes, because the invoice has independent legal significance.**
- C. No, because the invoice is not a business record.**
- D. Yes, because the invoice is a business record.**

ANSWER: B

CIVIL ETHICS

1. Attorney Jones represented Jack, who was injured in a bar-room brawl with Albert. After a pre-trial hearing, Attorney Jones talked to a local news reporter and stated, "We feel good about our chances. My client defended himself that night. He was hit with a pool cue by Albert, who was drunk. Albert failed his breathalyzer test. Go look it up. It's all in the police report. This isn't the first time Albert has done stuff like this. It's time for people in this community to hold him accountable." **Can Attorney Jones make these statements in his media interview?**
 - A. Yes. All statements of Attorney Jones quote or make reference to a public record, or are Jones's personal opinions about Jack and Albert.**
 - B. Yes. Breathalyzer results are inadmissible and will not be considered by the jury.**
 - C. No. An attorney cannot make general, public comments on the character, credibility or criminal record of a party or witness.**
 - D. No. Ethical rules presume that comments from an attorney within 30 days of trial are prejudicial and improper.**

ANSWER C

2. You have been informed by a large national insurance company that they would like to retain your services to represent their insured in relation to a car wreck in which their insured was involved and in which a lawsuit has been filed against their insured. The insurance company has informed you that they will pay your attorney's fees and all costs associated with defending this lawsuit and otherwise representing their insured.

QUESTION: Under what circumstances, if any, can you represent the insured?

- A. There are no restrictions on an attorney's ability to be able to represent the insured/client under these circumstances.**
- B. Provided that you obtain the insured/client's informed consent, you are ethically permitted to represent the insured/client.**
- C. You can only represent the insured/client under these circumstances if you obtain his informed consent, it does not interfere with your independent professional judgment, and communications with the insured/client are protected as privileged.**
- D. You can only represent the insured/client under these circumstances if you obtain, in writing, his consent.**

ANSWER: C

The following are samples of the essay portion of the examination:

SAMPLE 1:

CIVIL ETHICS AND CIVIL LITIGATION

Adam, an African-American employee of Reliable Towing Company (Reliable Towing), was terminated by Joe, the white owner of the company, for allegedly stealing equipment. Anticipating the firing, Adam secretly carried a tape recorder in his jacket pocket and recorded the firing without Joe's knowledge. Adam had previously seen Attorney Russell, because he felt that Joe was treating him unfairly. His attorney advised him to obtain "concrete" evidence of discrimination if he wanted to pursue a case. Adam returned to see his attorney with a tape recording. Adam filed a wrongful termination suit against Joe and Reliable Towing alleging that the firing violated his civil rights. Joe's attorney sent discovery requests that sought any and all recorded statements related to the events described in the plaintiff's complaint. Adam's attorney, Russell, did not provide or identify the recording in discovery responses. He replied "none" to the request.

Attorney Russell deposed Joe and asked Joe "Did you ever tell my client 'Brother, get off of my property' after you fired him?" Joe responded "no." The next day Attorney Russell sent Joe's attorney and the attorney for Reliable Towing a copy of the tape recording of the firing where the statement "Brother, get off of my property" may be heard. Attorney Russell sent a letter with the tape arguing that the statement is evidence that Joe fired Adam in violation of his civil rights and demanded an immediate financial settlement.

Pursuant to a local statute it is a criminal violation to “willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any oral communication.” The statute further prohibits one to “willfully disclose, or endeavor to disclose, to any other person the contents of any oral communication, knowing or having reason to know that the information was obtained through the interception of an oral communication in violation of the subtitle.” It is also a violation to “willfully use, or endeavor to use the contents of any wire, oral, or electronics communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication violation of the subtitle.” The statute provides for the recovery of damages and attorney’s fees in a civil action.

1. The wrongful termination case proceeds to trial and the plaintiff intends to introduce into evidence the recording that his client secretly made of his firing. **What pre-trial motion(s) should be filed? List the arguments in support and in opposition to the motion(s). Explain how the Court should rule as to each motion and why?**
2. Joe is furious over the attempted use of a recording that he believes was illegally made in a civil trial and he has hired you to file a grievance against Attorney Russell. **What rules of professional conduct, if any, did Attorney Russell violate and explain how the local grievance committee should rule and why?**
3. Joe’s attorney does not wish to pursue a grievance against the other attorney. **May he decline his client’s request to report this misconduct? Explain.**
4. After the wrongful termination suit is concluded, Joe files suit against Adam and his attorney, Russell for violating the local wiretap statute. Attorney Russell files a motion for Summary Judgment on his own behalf, **what should Attorney Russell argue and how should the Court rule?** Adam retains Attorney Russell to represent him in this action. **May Attorney Russell take this case? Explain.**

SAMPLE 2:

CIVIL TRIAL

On August 15, 2010, Alex, a 16-year-old living with his parents in Fake County, was planning to attend a Back to School party. The party was being hosted by Becky, another minor, at the home of her parents in Fictitious County. Before loaning the family car to Alex, his parents shared cocktails with their son in the backyard by the pool around 6:00 p.m.

At 7:30 p.m., Alex pulled out of his driveway and headed to the house party. When he arrived at 7:50 p.m., he phoned his parents to tell them he had arrived safely and would call when he was leaving. There was no parental supervision at the party and

Becky had coaxed her older brother, who had lived in Delaware for nearly four years and was only in town visiting, into supplying alcohol for the party. At 11:00 p.m., Alex called his parents to let them know he was leaving the party and would be home shortly. The next call from Alex to his parents came at 11:16 p.m. to tell them he had been involved in a car accident in Faux County.

Alex had been texting Becky to thank her for the invitation to the party and the free drinks when he crossed the centerline and collided head on with Jane. Due to the damage to his car in the collision, Alex was forced to leave his car on the passenger side. As he stumbled out of the car, Alex mutter, "Oh no! I hope I'm not asked to take a Breathalyzer!" Eve, an eyewitness to the accident, had stopped and ran upon the scene just in time to hear Alex's mumbled statement. Eve then proceeded to Jane's car to check on her. Fortunately, no one suffered fatal injuries in the crash, but Jane did suffer a broken neck and damage to her spine.

When police arrived on the scene, Eve pulled an officer to the side and reported what she had overhead Alex said as he left his car. Based on this alone, an officer approached Alex and asked Alex to submit to a Breathalyzer. Alex complied and his BAC (Blood Alcohol Content) was determined to be 0.07, just under the legal limit of 0.08. Alex was arrested and charged for underage drinking and driving, texting while driving, careless operation of a vehicle and crossing the centerline.

Jane contacted an attorney decided to file a civil suit against Alex, his parents for respondeat superior liability, Becky, her parents, and her brother. Pursuant to a local statute which allows filing by fax, Jane's attorney fax filed the petition in Fictitious County on August 15, 2011 at 5:01 p.m. The statute provides "the filing shall be deemed complete at the time that the fax transmission is received and a receipt of transmission has been transmitted to the sender by the clerk of court." Generally, the fax would have been received by the Clerk's office the following morning and date stamped according to the transmission time (Aug. 15, 2011 5:01P.M.). However, on August 15, 2011, the regular clerk was out sick and a temporary worker was hired to fill in. The temporary clerk, not familiar with the normal business operations, turned the fax machine off when she left at the close of business on August 15, 2011 at 4:30 p.m. Therefore, Jane's petition for damages was not received by the clerk's office until August 16, 2011 at 8:30 a.m.

Alex's attorney is preparing to answer Jane's petition for damages. He knows that if he does not raise all the exceptions and affirmative defenses in answer, those exceptions and defenses are waived.

1. What exceptions and/or affirmative defenses should Alex's attorney raise in answering Jane's petition for damages? List arguments in support of and in opposition to the exceptions and defenses.

Jane's attorney wishes to amend the original petition in order to add claims against Alex's parents for negligent lending of the vehicle based on information and belief

that Alex's parents knowingly allowed him to drink and drive the family vehicle. In order to do so, however, he requires Alex's deposition. Jane's attorney has noticed Alex to appear for deposition. Jane's attorney wants to question Alex about his parents' knowledge that he was drinking and driving their car. Alex is involved in criminal prosecution for his criminal charges as a result of the accident. His attorney seeks a motion for protective order to delay the taking of his deposition pending the outcome of his criminal trial. Jane's attorney thinks it best to depose him now and knows there is a presumption in favor the questioning party (Jane) when the answering party (Alex) pleads the Fifth or remains silent in a deposition.

2. How should the Jane's attorney oppose the motion for protective order and on what grounds? How should the judge rule?

Jane's attorney also seeks to subpoena Alex's cell phone records to demonstrate he was texting at the time of the accident, the content of the texts indicated he had been drinking prior to driving, and that Becky was responsible for his drinking too. Becky's attorney wishes to suppress this evidence.

3. How may Becky's attorney achieve this goal?

The case proceeds to trial. The court did not grant Alex's motion for protective order to prevent the taking of his deposition while his criminal litigation was simultaneously underway. However, the court permitted Alex to answer questions with "I plead the Fifth" or "I choose to invoke my Fifth Amendment right against self-incrimination" or simply remain silent and decline to answer. Alex was found guilty of underage drinking and driving, texting while driving, careless operation of a vehicle and crossing the centerline in his criminal litigation. Jane's attorney would like to enter Alex's deposition into evidence and his criminal charges. Jane's attorney would also like to call Eve as a witness to testify that she heard Alex make the comment about the Breathalyzer before the police arrived on the scene.

4. How should Alex's attorney oppose both the criminal charges evidence and his deposition and the testimony of Eve on the stand?

NBTA POLICY DOCUMENT: Inspection of Examination/Retention
(Board Approved– November 4, 2014)

Within 60 days after the announcement of the results of an NBTA examination, an applicant who has failed to pass a specialization certification examination may inspect his or her examination in such manner and place as the NBTA designates.

PROCEDURE:

1. Failure of Examination:

- Following the failure by an applicant of the Spring or Fall examination he or she will be notified in writing of his or her failure and informed of the examination inspection policy.
- An applicant must timely notify NBTA in writing that he or she wishes to review that examination.

2. Inspection of Examination

- NBTA upon request by an applicant will set up an inspection site at the NBTA Office or at a location geographically located as close as possible to the requesting applicant.
- Upon completion of the proctored location arrangement, NBTA will send a filled in copy of the Multiple Choice Examination, a copy of the Essay portion of the Examination and a copy of the applicant's answers.
- Only the Applicant will be permitted to review his or her examination at a proctored site for an hour's time.
- The applicant is not permitted to copy or make notes of the examination in any way.
- At the end of the hour all examination materials must be returned to the proctor for transmission to the NBTA Offices.
- Upon the date marking the 60th day after the announcement for that examination, all an applicant's examination materials shall be destroyed.

3. Passage of Examination:

- Following the passage by an applicant of the Spring or Fall examination he or she shall be notified in writing of his or her passage.
- At the date of the announcement of his or her passage of the examination all his or her examination materials shall be destroyed.

4. Examination:

- NBTA shall retain a copy of each administered examination in a secure location and in a secure medium that is accessible only to authorized personnel. All confidential information as to each applicant's examination score will be deleted after 60 days and no information concerning the applicant's file will be provided to a third party.

NBTA POLICY DOCUMENT: Testing Accommodations
(Board Approved– February 16, 2013)

It is the Policy of the NBTA to administer a specialization certification examination in a manner that does not discriminate, on the basis of a disability, against a qualified applicant with a disability in accordance with the Americans with Disabilities Act, as amended (ADA). A qualified applicant with a disability who is otherwise eligible to take the specialization certification examination may file a request for special testing accommodation if by virtue of a disability the applicant cannot demonstrate, under standard testing conditions, that the applicant possesses the essential skills and aptitudes that the NBTA has determined to be the basis for issuance of certification as a legal specialist.

PROCEDURE:

1. Requests:

- **A request for an accommodation for the Spring or Fall examination shall be made in writing and must be received 21 days prior to the date of the general examination's administration.**
- **The Request shall include the following minimum information: Contact information of the requestor (name, address etc.), the date scheduled for the general administration of the examination, and a description of the applicant's disability and the special accommodation requested. The specific reason for the request with any additional documentation in support of the request must be submitted on a Form prescribed by NBTA.**

2. Decisions on the Requests:

- **NBTA shall take steps reasonable and necessary for it to reach a fair determination before the general examination.**
- **The Request shall be reviewed by the Staff in consultation with the Dean of Faculty.**
- **A decision on a request shall be completed within 14 days of the receipt of the request.**
- **A denial of a Request may be appealed to the full Examination Committee and shall be filed within 7 days of the applicant's receipt of the denial. The appeal shall be conducted on the basis of the record compiled and the applicant shall be limited to a written argument in support of the appeal.**

3. Availability of Request Forms

All forms necessary to complete a request shall be available at no charge from the NBTA Office.

NBTA POLICY DOCUMENT:

Alternate Examination Administration Day for Religious Reasons (Board Approved– February 16, 2013)

It is the Policy of the NBTA to permit an applicant to take a specialization certification examination on an alternate date if the applicant for religious reasons is unable to take the examination on the date selected for general administration. This alternate examination day administration must not compromise the validity and reliability of the specialization certification examination for which it is requested.

PROCEDURE:

1. Requests:

- A request for change of date of the Spring or Fall examination shall be made in writing and must be received 21 days prior to the date of the general examination's administration.
- The Request shall include the following minimum information: Contact information of the requestor (name, address etc.) the date scheduled for the general administration of the examination and the alternate administration date requested. The specific reason for the request with any additional documentation in support of the request (on a Form prescribed by NBTA).

2. Decisions on the Requests

- NBTA shall take steps reasonable and necessary for it to reach a fair determination before the examination.
- The Request shall be reviewed by the Assistant Director in consultation with the Dean of Faculty.
- A decision on a request shall be completed within 14 days of the receipt of the request.
- A denial of a Request may be appealed to the full Examination Committee and shall be filed within 7 days of the applicant's receipt of the denial. The appeal shall be conducted on the basis of the record compiled and the applicant shall be limited to a written argument in support of the appeal.

3. Availability of Request Forms

All forms necessary to complete a request shall be available at no charge from the NBTA Office.

**NBTA POLICY DOCUMENT: Completion of Examination
(Board Approved– February 16, 2013)**

It is the Policy of the NBTA to permit an applicant to sit for a specialization certification examination twice (contingent upon file eligibility). If an applicant fails the second administration of the examination (any part or the entire exam) an applicant's file will be procedurally denied. Thereafter, an applicant must wait a calendar year from the date of last unsuccessful examination before re-applying to sit for a specialization certification examination, so that an applicant can demonstrate that the applicant possesses the essential skills and aptitudes that the NBTA has determined to be the basis for issuance of certification as a legal specialist.

PROCEDURE:

1. Failure of Examination:

- Following first failure by an applicant of the Spring or Fall examination he or she shall be notified in writing of his or her failure and informed of the examination completion policy.**
- Following the second failure by an applicant of the Spring or Fall examination he or she shall be notified in writing that; he or she failed; and that his or her application has been procedurally denied; and the date of the next general examination's administration that he or she will be eligible to attend.**
- Procedural closure of an applicant's file for failing the exam twice is final and not appealable.**