

## **Memo: Family Trial Advocacy Examination Information**

**From: Elizabeth Collins, Director of Examinations and State Accreditations**

### **OVERVIEW:**

The Legal Specialization program was created to provide a method for attorneys to earn the designation of certified legal specialist in particular areas of law for the purposes of increasing public protection and encouraging attorney competence. As part of the certification process, an applicant must pass a written examination in the specialization area. Board Certification is the process that is designed to identify the highly qualified attorneys in the practice area.

### **FORMAT:**

The examination consists of a combination of multiple choice and essay questions and is a total of 6 hours: A Morning Section (8:30 a.m. – 11:30 a.m.) with a one hour break and an Afternoon Section (12:30 p.m. – 3:30 p.m.) given on a Saturday. The 3-hour morning section is entirely multiple choice and the 3-hour afternoon section is made up of essays that contain subparts of hypothetical cases and fact patterns which contain a series of questions that require knowledge of Trial Practice, Evidence and Ethics. The questions test knowledge of the current law and 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 family trial law. **NBTA's examination is nationally administered. Questions are to be answered by applying the permitted reference materials below:**

- **Federal Rules of Evidence**
- **ABA Model Rules of Professional Conduct - FOR MULTIPLE CHOICE & ESSAYS OR**
- **ONLY FOR THE ESSAY SECTION OF THE EXAMINATION - If an applicant's state laws differ from Federal Law, an applicant may indicate the state and the applicable state law but is to respond using Federal Law as it applies to a given set of facts in the outcome of the issues presented**

It is not designed to be a bar or law school type of examination.

- **Multiple Choice Questions**

The Multiple-Choice questions test an applicant's knowledge of federal law. Individual state law is not tested on the Multiple-Choice section of the examination.

- **Essay Questions**

The examination's essay questions are also designed to be answered under federal law. However, if an applicant's state laws differ from federal law an applicant may indicate the state and the applicable state law but is to respond using federal law as it applies to a given set of facts in the outcome of the issues presented.

- **A passing score is 75%.**

Multiple Choice questions are 40% of the score and Essays are 60%. A combined score of 75% must be achieved in order to pass the examination. There are 75 multiple choice questions. A failing score in the Multiple-Choice ETHICS portion of the examination results in a failure of the entire examination. However, only the ETHICS portion of the examination must be retaken and passed.

**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:**

The NBTA Board Certification Examination in all areas of law will be offered only as an online examination that can be taken from your home or office using software from Examsoft called Examplify. You must sign up at least 30 days prior to the date of the administration of the examination and NO EXCEPTIONS can be made.

**COST:**

The application fee is \$400. The Examination fee is \$400. Please click [here](#) for the entire NBTA Fee Schedule.

**CONTACT:**

If you have any additional questions, please call me at 386.986.7590 or email me at [ecollins@nbtalawyers.org](mailto:ecollins@nbtalawyers.org). I look forward to helping you complete our examination requirement.

# **Specifications for the National Board of Trial Advocacy**

## **Family Trial Advocacy Certification Examination**

**Purpose of the Examination:** The Family Trial Examination consists of a combination of multiple choice and essay question. It is designed to verify the applicant's basic knowledge of the usual legal procedures, core substantive law (*including recent changes in law and regulations*) and trial ability that is common to specialists in the area of Family Trial Law. Family Trial Law is the practice of law dealing with legal issues arising from the family relationship of spouses and parent and child, including dealing with civil controversies arising from those relationships. In addition to actual pre-trial and trial process Family Trial Law includes evaluating, handling and resolving such controversies prior to and during the institution of suit and post judgment proceedings, litigation of family matters in all areas of substantive law before state courts, federal courts as well as the appellate processes.

An applicant is expected to demonstrate the ability to identify and resolve the issues, state and apply the applicable law, analyze and apply the law to the facts given and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other and their qualifications and limits. Of primary importance in the essay questions will be the quality of the analysis and explanation. It is recognized that the subject areas below may overlap, which may require incorporation of more than one substantive or procedural area in Family Trial Law which may apply several skills in responding to a single question.

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. Knowledge of the following fundamental lawyering skills may be assessed.

### **Subject Area 1: Professional Responsibility**

- 1.1 Ethical duties to client, opposing counsel, third parties, 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 Charging and retaining liens
- 1.7 Trial publicity
- 1.8 Dealing with an unrepresented person
- 1.9 Dealing with paralegals and other non-attorney staff
- 1.10 Duties of appointed counsel for minors

### **Subject Area 2: Jurisdiction and Venue**

- 2.1 Personal and subject matter jurisdiction
- 2.2 Federal jurisdiction/Hague Convention/Uniform Child Custody Jurisdiction and Enforcement Act/Uniform Interstate Family Support Act/Parental Kidnapping Prevention Act (PKPA)/Indian Child Welfare Act/Uniform Child Custody Jurisdiction Act
- 2.3 Venue

### **Subject Area 3: Marital, Non-Marital Property and Financial Issues**

- 3.1 Characterization of property/allocations, corporations, partnerships and agency, trusts, retirement benefits, etc
- 3.2 Property, including division, distribution and possession
- 3.3 Bankruptcy considerations (debts and obligations)
- 3.4 Partition
- 3.5 Deferred compensation and employment benefits
- 3.6 Stock options, stock, royalties and intellectual property
- 3.7 Pre-marital and post marital agreements

- 3.8 Enforcement, modification and defense of agreements entered into before during and after marriage
- 3.9 Tax and Qualified Domestic Relations Order's (QDRO's)
- 3.10 Co-habitation and rights of unmarried cohabitants

#### **Subject Area 4: Practice and Procedures**

- 4.1 Pleading
- 4.2 Discovery (including e-Discovery)
- 4.3 Service of process/ restraining orders
- 4.4 Pre-trial conference and order
- 4.5 Jury instructions
- 4.6 Motions/briefs/preservation of errors
- 4.7 Voir dire
- 4.8 Judicial findings and conclusions
- 4.9 Post-trial motions
- 4.10 Appealability and review
- 4.11 Restraining orders
- 4.12 Bifurcation
- 4.13 Motions for reconsideration/set aside judgments/new trial
- 4.14 Constitutional issues

#### **Subject Area 5: Present and Object to Evidence**

- 5.1 Introduction of evidence/mode and order/probative value
- 5.2 Proper use of demonstrative and other trial exhibits/writings, recordings, photographs, experimental evidence and the completeness rule
- 5.3 Compromise/ADR/Settlement Negotiations
- 5.4 Character evidence and related concepts
- 5.5 Qualification of expert and lay witnesses and scientific evidence
- 5.6 Judicial notice
- 5.7 Privileges and other exclusionary policies, spousal immunity and marital communications, attorney-client, work product, etc.
- 5.8 Relevancy and reasons for excluding relevant evidence
- 5.9 Refreshing recollection

#### **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 Statements against interests
- 6.11 Other exceptions to the hearsay rule
- 6.12 Prior statements by witnesses
- 6.13 Admissions by party opponent

**Subject Area 7: Children**

- 7.1 Child support
- 7.2 All forms of temporary relief/enforcement /guardianship
- 7.3 Custody/motions to terminate jurisdiction/adoption
- 7.4 Visitation/relative placement/grandparent visitation
- 7.5 Parentage issues
- 7.6 Factors determine parenting rights
- 7.7 Termination of parental rights/voluntary relinquishment/involuntary termination
- 7.8 Guardian ad litem
- 7.9 Parenting coordinators
- 7.10 Juvenile court practice
- 7.11 Confidentiality waiver/therapists, social workers/mental health providers

**Subject Area 8: Spousal Support / Alimony**

- 8.1 Income
- 8.2 Amount and duration
- 8.3 Modification
- 8.4 Effect of death of one party
- 8.5 Tax Consequences of Alimony pre and post the Tax Cuts and Job Act and impact on future modification of alimony actions
- 8.6 Insurance (life/health/disability/state/federal)
- 8.7 Spousal Social Security Benefits

**Subject Area 9: Domestic Torts**

- 9.1 Causes of action
- 9.2 Joinder of parties and actions
- 9.3 Recovery of damages as property
- 9.4 Limitations of actions
- 9.5 Legal and equitable remedies
- 9.6 Domestic violence

## FAMILY EXAMINATION MANUAL

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:

### **FAMILY EVIDENCE**

1. Laurie and Hugh were at trial in their divorce case. Hugh's attorney called Hugh's co-worker, Tom, to testify that Hugh has left work late morning on three occasions in the month prior to trial in order to pick up a sick child from school. But Tom's testimony surprised Hugh's attorney. Tom testified that he has never observed Hugh leave work to pick up a sick child from school. So in an attempt to impeach Tom, Hugh's attorney asked Tom: if there were work days when Tom and Hugh were assigned to different departments, were unable to observe each other, and that Tom would not necessarily know if Hugh had left work to pick up a sick child from school. Laurie's attorney objected. **How should the Court rule?**

- A. Overruled, because an attorney may impeach his own witness.**
- B. Sustained, because Tom was testifying on direct examination.**
- C. Sustained, because Hugh's attorney was limited to direct examination.**
- D. Overruled, because Tom had been dishonest.**

### **ANSWER: A**

2. You represent Quinn in a termination of parental rights case against his girlfriend, Rose. The state statute you are relying on requires that Rose be incarcerated for a felony, and that she be an "unfit" parent. During direct examination, to show that Rose is "unfit," you ask Quinn about specific actions Rose took to abuse her and Quinn's child. Rose's attorney objects, "Your honor, I object, this testimony is improper character evidence." **How should the judge rule?**

- A. Sustained. Evidence of Rose's character or a trait of her character is not admissible for the purpose of proving that she acted in conformity therewith on a particular occasion.**

- B. Sustained. Evidence of Rose’s other crimes, wrongs, or acts is not admissible to prove her character to show that she is “unfit.”**
- C. Overruled. However, you may only show Rose is “unfit” through testimony as to Rose’s reputation or testimony in the form of an opinion.**
- D. Overruled. Rose’s character is an essential element of your claim to terminate her parental rights.**

**ANSWER: D**

### **FAMILY ETHICS**

- 1. You have been contacted by a woman who requests your legal services in post-judgment enforcement proceedings regarding unpaid alimony and support against her former husband, who has substantial income and assets. She is unemployed and virtually entirely dependent upon her husband’s payments as a source of income. Because she has no money to be able to pay you to represent her, she has offered to compensate you by giving you 1/3 of any amount that she is able to recover, either by settlement or court order, at the conclusion of the post-judgment proceedings. **May an attorney enter into an agreement with this prospective client to represent her under these terms?****
- A. No, the arrangement would constitute an unethical transaction with a client and, unless the client first conferred with another attorney, or was informed of her right to do so, it would be unenforceable.**
- B. No, under no circumstances is an attorney allowed to enter into a contingent fee agreement in a domestic relations matter.**
- C. Yes, provided that there is a written agreement between the client and the attorney setting out the terms under which the attorney will be compensated, and provided that the 1/3 is a reasonable fee.**
- D. Yes, but only for a ruling that relates solely to the parties’ division of marital property, not including arrears in alimony or child support.**

**ANSWER: C**

- 2. You represent Josh in his divorce from Jill. Jill has offered Josh a settlement wherein she keeps the marital residence and agrees to pay the mortgage. Based upon Jill’s financial disclosures, you know the mortgage for the residence will cost Jill approximately 60% of her net monthly income. You advise Josh not to accept the settlement because the lender will pursue him for payment on the mortgage if Jill**

defaults, which is highly likely. Josh agrees to the settlement against your advice.  
**What should you do?**

- A. Withdraw as counsel.**
- B. Refuse the settlement offer because of your duty to protect Josh.**
- C. Accept the settlement on Josh's behalf.**
- C. Accept the settlement only if Jill agrees to sell the marital residence.**

**ANSWER: C**

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

**SAMPLE 1:**

John and Jane Smith were married on December 25, 2009. They had one child; James, born July 4, 2010. John filed a divorce complaint in the State of State A on April 1, 2011 and a Decree of Dissolution of Marriage was rendered on December 1, 2011. On that date the parties entered into a marital dissolution agreement which was approved by the Court and incorporated into the Judgment of Dissolution of Marriage. It provided for joint legal custody of James with physical custody to Jane and specific rights of visitation, including holiday, summer vacations and transportation for James to and from State B to State A. John had exercised his visitation rights from the date the divorce decree was rendered until around January 11, 2013.

Prior to December 1, 2011 when the divorce decree was entered, Jane and their son James, had moved from State A to State B. The driving distance between John's home in State A and Jane's home in State B is 2 hours. Jane and James have lived in State B for approximately two years and eight months. John is and has been a resident of State A since the divorce decree was entered on December 1, 2011.

On April 1, 2013, John filed a post judgment motion in State A for Contempt, claiming that Jane, the mother, has refused to allow him visitation with his son James by failing to comply with the visitation schedule, driving arrangements, and vacation time ordered by the State A Court.

**1. As Jane's attorney, what advice should be given to Jane concerning whether or not the State of State A has maintained or lost subject matter jurisdiction?**



**2. As John's attorney, what arguments should be given in support of John's position that State A retains subject matter jurisdiction under the UCCJEA?**

**SAMPLE 2:**

**Facts**

Wife Mary (Your client)

Husband John (Opposing Party)

Date of Marriage - July 4, 1977

Date of Separation – January 30, 2004 John was requested to leave the residence by police

Petition for Dissolution filed - February 1, 2004

Children Pat 8/16/1988

Chris 6/6/1991

Sam 5/14/1994

Residence Hometown, State

**Background**

Mary 49 years old. Bachelor's Degree in Nursing; Worked as a Registered Nurse at Children's Hospital in Hometown, State until May, 1988. Has not worked since the birth of their first child.

John 55 years old. M.D. Pediatrician. Employed in private practice as a physician in Hometown, State where he is the sole stockholder in his medical practice. Earns \$550,000.00/year.

Mary reports that she met John in Hometown, State, while she was in school. John owned a medical practice and had owned it for the 3 years prior to marrying Mary. John was born and lived most of his life in Hometown, State. Mary was born and raised in New Haven, State. Mary and John eventually married and Mary decided to remain in Hometown, State. Mary worked as a Registered Nurse for the first 11 years of their marriage and then became pregnant. By agreement of the parties, Mary quit her job and stayed home after the birth of their first child and never returned to work outside of the marital home.

Over the past two 2 years, Mary and John's relationship has deteriorated. John has become removed from active participation in the children's lives and refuses to discuss and/or communicate with Mary on those issues affecting the health, education and welfare of the children, especially, upcoming college decisions. John has become emotionally detached and Mary fears John is or has engaged in an extra marital affair.

While paying last months credit card bill, Mary noticed an unusual charge to a local lingerie shop. Mary also discovered several e-mails from a woman, a pharmaceutical sales rep, to John, containing explicit descriptions of their activities. Mary questioned John about these recent discoveries and John denied them. John had been drinking excessively that night and John began yelling obscenities and threats at Mary. Mary's next-door neighbor, Jane, overheard the argument, and called 911. The police arrived, took statements, and made a report. Neither party was arrested but John was asked to leave the marital residence for the evening. Recently, John and his parents have threatened to take the children and not return them to Mary. John's parents have not seen the children in over 90 days and are using this as a reason for their threats. Mary continues to fear for her safety and the safety of the minor children.

John has been gone from the residence for 5 weeks now and John has not given Mary any money to pay the marital expenses. Mary discovered that John has liquidated the checking and savings accounts and has canceled her credit cards. John is also trying to list the marital residence for sale and has made overtures that he intends to retire and sell his medical practice. Mary is very concerned that all of the assets will be liquidated prior to trial.

Mary reports that she is interested in moving back to New Haven, State to be closer to her family. Mary has no family in Hometown, State. John vehemently objects to any relocation. Mary reports that this move will provide free child care by her parents while she attends school to get back into the work force, and that the University of New Haven State is the one of three (3) schools in the country which has a program designed for re-certification of registered nurses, providing a curriculum which is only 3 years.

Mary also reports that she feels Hometown, State is too large of a city to raise small children and has too much crime. Mary believes that a move to New Haven will provide a safer and more family like atmosphere to be raised, and that the schools rank far superior to those in Hometown, State.

Mary has a continuing concern about her ability to pay the household expenses and have spending cash. Mary would like to immediately secure sole possession of the residence, obtain money from John and stop John's liquidation of assets, including the sale of the residence and his medical practice.

**1. Discuss Mary's immediate options, the burden of proof, your strategy, including what witnesses should be called, the exhibits and evidence to be presented and the likelihood of success.**

Mary is greatly concerned about the children. Mary is concerned about John's threats and believes John may kidnap the children and not return them.

**2. Discuss third party visitation rights and what, if any, protections Mary has in the event John takes the children and fails to return them after a period of visitation.**

Mary requests that you seek an order of the court granting her leave to relocate herself and the minor children to New Haven, State.

**3. List and discuss the options for Mary, the current status of the law, and the elements for the court to consider in relocation, your strategy and the likelihood of success.**

Mary believes John has intentionally decreased the value of his medical practice by turning patients away and slowing his practice. Mary has no idea the true value of the medical practice and whether she has any interest in it whatsoever.

**4. What evidence and testimony (including from whom) will be required regarding proof of value of this asset? What documents would need to be subpoenaed to value the practice? Discuss Mary's concerns whether the medical practice is marital or separate property and the proof you will require regarding the same?**

