

**Memo: Social Security Disability 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 that require knowledge of Social Security Disability (SSDI and SSI) administrative procedures and ethics. The examination may include one appellate brief writing question or questions involving a pre-hearing memorandum or brief to be submitted to an Administrative Law Judge. Questions may include reopening prior applications and pursuing subsequent applications, hearing level strategic decisions, Social Security Disability (SSDI and SSI) law and practice, including administrative and judicial appeals and common medical impairments, etc. 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 ability that is common to specialists in the area of SSD 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](mailto: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](http://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](mailto:garcangelo@nbtalawyers.org)) at the NBTA for additional information.
- Testing Accommodations are available to qualified individuals. Please contact Gwen Arcangelo ([garcangelo@nbtalawyers.org](mailto: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 Social Security Disability Certification Examination (Rev. April 27, 2019)**

Purpose of the Examination: The Social Security Disability Examination is designed to verify the applicant's basic knowledge of the usual legal procedures, core substantive law and representative ability that is common to specialists in the area of Social Security Disability Advocacy. The practice of law in Social Security Disability Advocacy involves dealing with legal issues arising from the representation of individual before the Social Security Administration in claims for disability benefits under the two primary programs for receiving benefits (Title II and Title XVI) In addition to actual representation at an administrative hearing, Social Security Disability Advocacy includes understanding medical issues in order to collect, evaluate, and submit evidence demonstrating disability, as well as understanding eligibility for each program, and the appeal process both before and after an administrative hearing. In addition to the administrative process, Social Security Disability Advocacy includes evaluating and handling appeals in federal court and any legal issues associated with federal court practice, including attorney fees,

An applicant is expected to demonstrate the ability to identify the issues, state and apply the applicable law, as well as 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 Social Security Disability Advocacy. 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 and the tribunal
- 1.2 Social Security Administration rules of conduct
- 1.3 ABA Model Rules
- 1.4 Fee agreements/basis for fees/multiple representatives
- 1.5 Fee Agreement Process/Fee Petitions
- 1.6 Prohibited referrals and inducements/Contact with prospective clients
- 1.7 Basis of Sanctions
- 1.8 Supervising paralegals and other non-attorneys
- 1.9 Declining terminating representation

### **Subject Area 2: Practice and Procedure**

- 2.1 Client intake
- 2.2 File development
- 2.3 Consultative examinations
- 2.4 Hearing preparation
- 2.5 Pre/Post-Hearing Briefs
- 2.6 Gathering/Submitting evidence
- 2.7 Cross-examination of experts
- 2.8 Appeal process, including time limits
- 2.9 Applicable law – Act, Regulations, Rulings, Caselaw, Employee Operating Instructions
- 2.10 Medical improvement/Continuing Disability Review (CDR)
- 2.11 *Res Judicata?* Collateral Estoppel and reopenings

- 2.12 Post entitlement – trial work period, extended period of eligibility PASS
- 2.13 Overpayment/ Waiver

### **Subject Area 3: Evaluation of Medical/Vocational Issues**

- 3.1 Definition of disability
- 3.2 Anatomy/physiology
- 3.3 Reviewing medical records/tests/laboratory findings
- 3.4 Severe/not Severe Impairment
- 3.5 Meeting/Equaling a Listed Impairment
- 3.6 Physical Impairment and exertion levels –i.e. sedentary, light, medium, etc.
- 3.7 Drug and Alcohol abuse
- 3.8 Medical Opinions – source statement, interrogatories, and relative weight
- 3.9 Residual Functional Capacity
- 3.10 Past relevant work
- 3.11 Medical/Vocational Rules (“Grids”)
- 3.12 Age Categories
- 3.13 Transferable skills

### **Subject Area 4: Eligibility**

- 4.1 Applications – Title II and Title XVI (SSI)
- 4.2 Types of benefits – adult, adult children, widow and survivors
- 4.3 Protective filings
- 4.4 Income and resources for SSI
- 4.5 Worker’s compensation offsets
- 4.6 Effect of other income – unemployment, LTD, and VA benefits
- 4.7 Substantial Gainful Activity
- 4.8 Onset date/Date Last Insured

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

- 5.1 Introduction of evidence/mode and order/five day rule
- 5.2 All evidence rule
- 5.3 Subpoenas
- 5.4 Claimant/witness testimony
- 5.5 Medical source records/opinions/testimony
- 5.6 Consultative examinations and tests
- 5.7 State agency medical/psychological consultant opinions/testimony
- 5.8 Medical expert opinions/testimony
- 5.9 Vocational expert opinions/testimony
- 5.10 Non-medical source evidence
- 5.11 OIG Fraud Investigation Reports
- 5.12 Internet information/social media
- 5.13 Post-hearing evidence
- 5.14 New and material evidence – Appeals Council
- 5.15 New and material evidence – judicial review
- 5.16 Administrative/judicial notice

### **Subject Area 6: Post Hearing Appeals**

- 6.1 Request for Review
- 6.2 New and Material Evidence
- 6.3 Appeals Council procedures
- 6.4 Federal Court – including jurisdiction and venue
- 6.5 Briefing/Issue selection
- 6.6 Strategy decisions
- 6.7 Standard of Review – legal error and substantial evidence
- 6.8 Remands – sentence four and six
- 6.9 Attorney Fees -EAJA and 406(b)
- 6.10 Circuit caselaw



## 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](mailto: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 16<sup>th</sup> examination the application must be received and processed by March 1<sup>st</sup>)

### **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](mailto:garcangelo@nbtalawyers.org), Phone 508-384-6565 or NBTA, 850 Franklin Street, Suite 8, Wrentham, MA 02093

## SSD EXAMINATION MANUAL

(Revised 9/2016)

Please note: your demonstration of knowledge of ETHICS is 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:

### SSD

1. Which of the following is not correct under the Equal Access to Justice Act (EAJA). Fees-
  - A. can be awarded for merely obtaining a “sentence four” remand in the federal courts.
  - B. can only be awarded if reversal for award of benefits is ordered by a federal court.
  - C. can be awarded in conjunction with Section 406(b) attorney fees.
  - D. require that the lesser amount of the EAJA fee award or the 406(b) award for the same services be refunded to the claimant.

**ANSWER: B**

2. Service of a complaint filed in District Court in a Social Security Claim or SSI claim must be made upon the United States Attorney, the Commissioner of Social Security and the US Attorney General. **At which office is service on the Commissioner considered completed:**
  - A. The Office of Central Operations in Baltimore, MD.
  - B. The Program Service Center where favorable decisions are processed.
  - C. The Regional Program Service Center for the region in which the complaint is filed.

- D. The Regional or General Counsel office for the region which is defending the case.**

**ANSWER D**

**SSD ETHICS**

1. Your client's alleged impairment is based primarily on residual pain, numbness, and radiculopathy from a failed back surgery. The surgery was performed after the client was injured during a fall at work. Your client also has a workers' compensation claim but you are only handling the disability case. Besides being seen by the surgeon, your client has been treated for his back condition by a primary care physician ("PCP"). You have asked both doctors for medical source statements and only the PCP has obliged. The statement is favorable for your client. Just minutes before the hearing your client informs you for the first time that two weeks previous the surgeon sent him to a functional capacity evaluation ("FCE") at the request of the workers' compensation insurer. The client also tells you that his workers' compensation attorney has reviewed the FCE and had told him that it did not help his claim. At the hearing your client is questioned by the ALJ about his treatment with both the surgeon and PCP. The issue of the FCE does not arise. However, at the end of the examination the ALJ tells your client she has reviewed his PCP's medical source statement but wishes the surgeon had also provided a medical opinion because it would be helpful to her if she had more information about how his functioning was affected by the impairment. The ALJ then turns to you and asks if you anticipate submitting any other evidence from the surgeon's office.

**Which of the following options do you think is the best course of action? Tell the ALJ you-**

- A. do not anticipate submitting any more evidence because you know the FCE is not beneficial for your client and you have a duty to be a zealous advocate for your client.**
- B. do not anticipate submitting any more evidence because the ALJ wanted a medical source statement from the surgeon and the FCE was performed by someone else and is not the surgeon's own opinion.**
- C. are uncertain as to whether you will submit additional evidence and then, after the hearing is over, obtain a copy of the FCE, review it, and submit it only if it is helpful for your client.**

**D. do anticipate submitting more evidence and then, after the hearing is over, obtain a copy of the FCE and submit it regardless of its helpfulness to your client.**

**ANSWER: D**

2. Several years ago your client was driving a bus when she was rear-ended by a drunk driver and injured her neck and had to have surgery. The client recently received her initial denial and has just hired you on her Social Security disability case. Right before signing your attorney-client contract, she hands you a report from physical consultative examination. The report is favorable to a finding of disability. Your client tells you that her workers' compensation case is in the final stages of litigation and that she just fired the attorney who was working on the case. When you ask why, she indicates their professional relationship deteriorated for a number of reasons, including the fact that he told her that she should not file for Social Security disability until she received an impairment rating from her doctor and she did not receive a rating until about two years after the injury. The client then points to the report and tells you that she thinks this may help with her workers' compensation case. A day later the attorney for the workers' compensation insurer calls you and says your client gave him your number. The attorney says it looks like they are close to settling the workers' compensation case and asks you to send over the Social Security disability file so he can review it. You tell that although you will not send him the file, there is a medical report which is supportive of your client's allegations. The attorney then asks if you can send just that report over as it could help with speeding up the resolution of the workers' compensation case.

**Which of the following options do you think is the best course of action?**

- A. Send the report to the attorney because you should always act in a manner beneficial for your client, even in cases where you will not receive a professional fee.**
- B. Send the report to the attorney because your client has already given you implied permission when she told you she thought the report would help her workers' compensation case and she gave the attorney your number.**
- C. Do not send the report to the attorney because a medical opinion which is favorably disposed towards your client's disability might actually harm her workers' compensation claim because the burden of proof is different in each matter.**

**D. Do not send the report to the attorney until you get written permission from your client to do so.**

**ANSWER: D**

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

**SAMPLE 1:**

**PRE-HEARING MEMORANDUM OR BRIEF**

Ms. R. is a 41-year old woman who attended special education classes through the eighth grade. She is dyslexic and never learned to read or write. She went to work in the agricultural fields where she drove a farm tractor and operated other heavy equipment for many years. Her past relevant work included the agricultural work as well as eight months of work as a caretaker. In the caretaker job, Ms. R. had to drive an elderly man to dialysis treatments and assist him in and out of the shower.

In 2000, she was involved in an automobile accident in which she injured her cervical and lumbar spine, and she had a cervical fusion at C5-6 and C6-7. After the surgery she could no longer perform her agricultural driving job due to physical restrictions. On September 14, 2002, while working as a caregiver, she was injured in a fall when she helped her patient into the shower. Subsequent to that fall she was treated by a pain management physician "A" who noted her low back and left leg pain complaints when he first treated her on June 17, 2003. A lumbar MRI revealed a herniated disc at L4-5 as well as spondylosis. The doctor prescribed Vicodin ES, Gabitril and Xanax as well as lumbar epidural steroid injections.

On August 27, 2003 Ms. R. complained to her treating doctor that she had continuing pain in the low back and right hip with noticeable muscle spasms. The doctor prescribed physical therapy and Robaxin for the spasms. On March 25, 2004, the doctor recommended a discogram and surgery, medication and physical therapy.

In August 2004, Ms. R. was involved in another motor vehicle accident when the vehicle she was driving was hit by a truck. She was evaluated by a neurosurgeon, and she was briefly treated by pain management specialist "B" who first saw Ms. R. on January 21, 2005. Pain management specialist "B" noted that a cervical MRI revealed a three-level disc herniation at C2-3, C3-4 and C4-5. A January 25, 2008 abnormal EMG study reflected paravertebral spasms suggestive of nerve root irritation, chronic bilateral C5 radiculopathy, and left carpal tunnel syndrome. Pain management specialist "B" diagnosed cervical radiculopathy, prescribed a splint for the claimant's left hand and wrist, and recommended continued pain management with her original pain management physician A. Ms. R. had multiple physical complications and hospitalizations, including a stay for a lung embolism.

During her hospital stay in January 2008, Ms. R complained that she was experiencing breathing problems. Doctor C noticed lesions which had developed over Ms. R.'s extremities. Doctor C concluded that Ms. R. suffered from sarcoidosis.

Ms. R. subsequently began treatment with a primary care physician "D" who continues to treat her. Doctor D prescribed numerous medications including hydrocodone for back pain as well as alprazolam and amitriptyline for anxiety and sleep. Ms. R. is also on a regimen of prednisone in an attempt to control her sarcoidosis which causes severe problems with breathing.

After she injured herself at work in 2002, she was paid biweekly indemnity benefits for almost two years before she entered into a workers' compensation lump sum settlement of \$100,000.00. Ms. R.'s date last insured was December 31, 2007.

**1. Write a pre-hearing memorandum or brief in support of Ms. R's claim for Social Security Disability benefits. Please indicate the medical records and other documentary evidence that you have submitted to the ALJ.**

**SAMPLE 2:**

You were recently retained on October 1, 2012 to represent Brenda on her claim for Title II benefits. Brenda filed a claim for Title II benefits on December 31, 2011 and she claimed an alleged onset date of August 8, 2010. Brenda was born on December 5, 1961, she completed the 11<sup>th</sup> grade and she divorced in 2007. Brenda completed her work history report in connection with her initial application and stated she worked as the manager of a bar from 1985 to 1993 and she worked off and on from 1994 thru 2010 as a waitress. Brenda's date last insured was December 31, 2012. Brenda has well documented moderate-to-severe avascular necrosis of the right hip, she had arthroscopic surgery on her left knee in 2007 and in 2010 with residual severe degenerative joint disease, fairly well controlled hypertension, mild asthma and fairly well controlled diabetes mellitus. Although she is able to ambulate well enough to take care of her activities of daily living, she claimed she was unable to stand or walk for more than a couple of hours throughout the day and she can no longer carry more than negligible weight due to the pain she has in her knee and hip. You conducted a pre-hearing conference with Brenda on December 17, 2012 for her hearing scheduled for February 5, 2013. At the pre-hearing conference, you discussed with Brenda that her orthopedic records mention she originally injured her knee when she fell while working as an exotic dancer. Brenda confides in you that she did not work as bar manager but rather as an exotic dancer. You advised her to complete an affidavit to the ALJ informing him that she never worked as a bar manager but rather as an exotic dancer. You advised her of the perjury implications. Also, you informed her that the vocational expert at the hearing always finds transferable skills from managerial jobs. Brenda said that she recently moved back to a small town and was forced to live with her mother. She stated she was embarrassed by the fact that she was an exotic dancer. She was also concerned about what her mother and other people in the town would think. Brenda was open to the idea of the affidavit but wanted to think about it. She stated she

would get back with you when she decided what to do. On December 31, 2012, Brenda was involved in a Motor Vehicle Accident and suffered a closed-head injury. Her doctors state that she will never be the same mentally. The doctors state she will need to move in to an assisted living facility because she cannot mentally take care of herself. You and Brenda attend the hearing on December February 5, 2013, but Brenda's mother has to testify (Brenda's mother has no knowledge of Brenda's work history other than as a waitress) on her behalf because Brenda's diminished memory.

**How do you proceed with the representation at the hearing? Discuss all procedural issues and whether you disclose Brenda's true work history.**



**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.**