To the Honorable Chief Justice and Associate Justices of the Supreme Court:

Report of the Board on Attorney Certification on the Status of Attorney Certification and Expansion of Certification Into the Area of Real Estate Law

INTRODUCTION

In 1999, the New Jersey Supreme Court Board on Attorney Certification (Board) requested that the Court consider its recommendation that the attorney certification program in New Jersey be expanded to encompass real estate law. The Board acted in response to the Court’s request in Opinion 26 of the Committee on the Unauthorized Practice of Law, 136 NJ 323 (1995), that the Board study the Special Master’s suggestion that certification in residential real estate law might be appropriate. An Ad Hoc Committee was appointed by the Court to perform that task and quickly concluded that certification in real estate law would benefit the public. However, the Ad Hoc Committee’s work led it to go beyond recommending certification solely in residential real estate matters. Instead, the Ad Hoc Committee concluded that qualified attorneys should be able to obtain certification in up to three real estate sub-specialties: residential, commercial, and land use. The Board adopted this recommendation, finding that to adequately satisfy the needs of legal consumers, the three areas of certification were preferred. The Board was of the view that, if an area of legal specialty is so broad that consumers are likely to have difficulty identifying a certified attorney with relevant expertise, then the purpose of certification would be defeated.

In late 1999, the Court declined to approve certification in three sub-specialties of real estate law, instead asking the Board to submit a more limited proposal. The Board sought the aid of its Ad Hoc Committee on Real Estate Certification to devise a somewhat hybrid certification plan, which this report will discuss following a brief overview of the national trend in lawyer specialty certification programs.

NATIONAL STATISTICS ON LAWYER CERTIFICATION

Any discussion concerning the expansion of the attorney certification program in New Jersey should begin with a review of current statistics and trends. Lawyer specialty certification is gradually gaining ground both nationally and in New Jersey. Currently Alabama, Arizona, California, Connecticut, Florida, Georgia, Idaho, Indiana, Louisiana, Maine, Minnesota, New Jersey, New Mexico, North Carolina, Pennsylvania, South Carolina, Tennessee, and Texas have certification programs administered either by
the courts, the state bar association, or by private certifying organizations accredited by the American Bar Association Standing Committee on Lawyer Specialty Certification. Many of these state programs continue to expand the areas of law in which specialty certification is granted. For example, Florida now has seventeen areas of specialty certification and is currently considering certifications in disability law, construction law, and intellectual property law. Mississippi, South Dakota, and Wisconsin do not have state-administered certification programs; however, their disciplinary rules have been amended to allow attorneys to advertise a certification obtained from an ABA accredited certifying organization. New Hampshire and New York are considering similar amendments. Hawaii, Michigan, Virginia, and Nevada are currently considering the establishment of state certification programs or accrediting private certifying bodies to administer certification programs in their states. There are also five private national certifying organizations that certify attorneys in the areas of civil trial law, criminal trial law, matrimonial law, elder law, business bankruptcy, consumer bankruptcy, creditor’s rights, and professional liability law.

The ABA Standing Committee on Specialization compiles statistics on certification programs throughout the country. As of 1999, there was a total of 25,357 certified attorneys. There is steady growth in the number of attorneys certified each year, although the pace has slowed somewhat. For example: in 1994, there were 18,018 certified attorneys; in 1995, there were 19,547 certified attorneys; in 1996, there were 21,016 certified attorneys; in 1997, there were 22,660 certified attorneys; and in 1998, there were 24,033 certified attorneys. The largest percentage of certified specialists holds certification in civil trial law (26%), followed by: criminal law (10%); family law (9%); personal injury (8%); real estate (8%); and trust and estates (8%).

From the above statistics, it is apparent that specialty certification has been embraced by the legal profession. The American Bar Association (ABA), through its Standing Committee on Lawyer Specialty
Certification, is championing institutional specialization of attorneys. From the public’s perspective, two surveys taken several years ago demonstrate consumer support for certification. In a 1995 survey on consumer attitudes toward the legal profession conducted by the Social Science Research Institute at the University of Tennessee, a majority of those responding indicated that they would be more likely to use a lawyer who has been certified. More important, more than half of the respondents assumed that lawyers already were board-certified. (See: ABA Law Journal, May 1998, Focus: Lawyer Certification) In 1996, the North Carolina Bar conducted a survey of public opinion concerning lawyer advertising. Hundreds of consumers were asked whether they would find it useful to have lawyers certified by the state in specialty areas if they were qualified by experience and training. Seventy-five percent of those responding said that they would find such information useful. Approximately 60 percent responded that they would favor expansion of certification into other areas. (See: In Defense of Specialization, L. Thomas Lundsford II, Executive Director of the North Carolina State Bar Association, 1998)

Also, of interest is the ABA Standing Committee’s active role in the issues surrounding multidisciplinary and multijurisdictional practice currently being addressed by the ABA. It is the Standing Committee’s view that should MDP or MJP be approved nationwide, certification of specialists is essential to enable legal consumers to make an informed choice when seeking legal counsel. In a Memorandum to the ABA Commission on Multidisciplinary Practice dated March 17, 2000, the Standing Committee emphasized that the Commission should not recommend any action that would interfere with consumers’ ability to identify lawyers with specialized experience, including those recognized by bona fide board certification programs.

NEW JERSEY STATISTICS
New Jersey has one of the more successful state-run certification programs. From the inception of the certification program, the number of attorneys seeking certification each year has grown slowly but surely. To date, New Jersey has certified approximately 1800 attorneys. There are currently 1499 active certified attorneys in New Jersey: 1049 in civil; 276 in criminal; 86 in matrimonial; and 88 in workers’ compensation. The three most common reasons for certifications not being renewed are: retirement from the practice of law; a failure to complete the CLE requirements; or a significant decrease in the level of involvement in the area of certification.

PROPOSAL FOR REAL ESTATE CERTIFICATION

In 1996, the Court approved expansion of the existing program to include certification in matrimonial law and workers’ compensation law. When the Board initially sought comment from the Bar about expansion, the idea was warmly received, as demonstrated by the editorial in the New Jersey Lawyer, on March 7, 1994 that supported further expansion at the appropriate time. It is the Board’s view that the appropriate time has come.

The primary purpose of attorney certification is to provide a means for consumers to find the lawyers they need in the transactions in which ordinary people were most often in need of a lawyer. The Board’s commitment to that purpose remains unaltered. It is the Board’s view that legal specialization, including the expansion of the current program into real estate law, advances the quality of lawyering in New Jersey; serves the public by enabling consumers to identify the appropriate attorney to meet their needs, one who has a tested level of proficiency in the certified specialty; effectively addresses the de facto specialization that exists throughout the State; increases professionalism among attorneys; and assists the Bar in identifying qualified attorneys for referral of specialized matters. In addition, expansion of the
program into new areas of specialization will serve to ensure that lawyers maintain a commitment to the practice of their specialty. The continuing legal education requirement facilitates the growth of an attorney’s knowledge and expertise. This is particularly significant in a non-mandatory CLE state such as New Jersey.

There are at least two compelling reasons why real estate should be added to the certification program. The first reason is that most ordinary consumers do not know a lawyer with experience in real estate transactions, partly because such transactions are not frequent occurrences in a person’s life, so the consumer relies on advice of a friend, the yellow pages, or a real estate broker to find an attorney. The second reason is that certification is expected to raise the level of practice of lawyers handling real estate transactions and to validate the qualifications of lawyers who participate in continuing legal education and who otherwise are qualified by experience, peer review, substantive testing, and other defined requirements of the certification program.

Through the experience of the lawyer referral services, it can be demonstrated that in most counties consumers who call looking for a lawyer ask if the lawyer specializes in the field of inquiry or if the lawyer is an expert. The legal consumer wants someone who is competent to handle their case. Without a certification from an appropriate authority, consumers look for alternate ways to identify the lawyer they know they need, including yellow pages advertising or other advertising media. The legal consumer also may turn to friends for advice and often accept recommendations from people who do not have an adequate basis to judge an attorney’s qualifications. They turn to commercial organizations that often place an interest in increasing their income from membership dues or fees above the needs of the consumer. They also turn to real estate brokers who are involved in the transaction, mistakenly believing that the broker or sales person is their friend and is working for them.
Brokers most often have a conflict of interest in recommending a lawyer to a real estate client. A broker wants the transaction to close above all -- his or her commission is earned only when the deal closes. Brokers are of the view that they benefit the party to the transaction by focusing on low costs at the expense of legal competence. These real estate brokers are not often in a position to judge competence, especially those sales persons with little experience or training, or those who have been involved in a number of transactions but who have not been through difficult transactions that would give them the opportunity to observe good lawyers under conditions that do not regularly arise.

If brokers are in the practice of recommending lawyers, they should at the very least have the tool that certification provides. Recommending a certified lawyer is some protection for the broker who can at least say that she selected someone on more than friendship between the broker and lawyer. Certification also serves the consumers who have no better way to find a lawyer than through the yellow pages. Consumers already look for specialists among physicians. The same consumers would be pleased to search for a certified legal specialist who has obtained a certification that is impartial, independent, and authoritative; criteria not available without a Court-sponsored program.

Moreover, certification in real estate law will have a positive effect on the legal profession in New Jersey by effectively raising the level of practice among the real estate bar. With the Court's approval of the "South Jersey" practice, the public needs some way of determining whether a specific attorney is competent to handle a residential real estate closing. Oftentimes, what seems to be a relatively simple closing to an inexperienced or less competent attorney is actually more difficult, requiring an ability to identify subtle issues relating to, for example, environmental and/or land use law. Because of an inability to spot these issues, the inexperienced attorney can make significant errors that later adversely impact the client, and consumer confidence in the legal profession suffers from such inexperience.
The often expressed idea that real estate transactions, at least in the residential arena, are simple transactions that can be handled by any lawyer is more than just overstated, it is erroneous. Real estate has become an area of practice that is complicated by contract issues, environmental issues, title issues, inspection and physical property issues, finance issues, and market and value issues. The lawyer without experience and special training can be more of a detriment than a service to the legal client.

If real estate transactions migrate to lawyers of tested competence, experience, and interest in the transactions, the best interests of the profession and the consuming public will be served. The profession benefits through an improved image if transactions proceed smoothly as they more often do when lawyers know what they are doing in a particular field of practice. In addition, a lawyer with a particular interest and solid experience in real estate law will have adequate staff that is capable of assisting with the transaction. The frustration of dealing with a lawyer and his or her staff who have little experience and knowledge in real estate law will be greatly reduced. The resultant benefits flow directly to the clients.

The Bar Association and the Court’s examination of the differences between the North Jersey and South Jersey practices revealed problems, some significant, in both areas of the state. It was found that an inexperienced lawyer who did not take real estate transactions seriously, or who was ill prepared in his or her knowledge of the subject matter, did not serve his or her client substantially better than the client who chose not to use a lawyer. In South Jersey, most attorneys generally do not handle enough residential real estate matters to gain competence in that area of practice. Specialization would alleviate the problems created thereby. With certification in real estate law, real estate brokers and other less experienced lawyers would be more likely to refer difficult matters to those that have a demonstrated and tested level of competence in handling such matters.

According to the Ad Hoc Committee’s recommendation adopted by the Board, real estate
certification should include facets of commercial real estate law, land use law, and environmental law because a competent real estate lawyer should be knowledgeable in these areas to properly and adequately serve the client. Residential real estate should entail more than just basic real estate closings, allowing for a more multifaceted type of certification. This view is especially relevant to the South Jersey practice, where pure residential real estate certification would not properly serve the consumer or the real estate bar.

The Board recommends the Court’s approval of the proposed regulations governing real estate certification. While the proposed certification is for residential real estate sales, in order to effect a more multifaceted specialty, an applicant is entitled to substitute up to 50% of the required number of closings (on a one-to-one basis) with experience in commercial real estate, land use, and other related areas of practice.

PROPOSED AMENDMENTS TO THE BOARD’S REGULATIONS

The following are the proposed Regulations that would cover real estate certification (See RG. 102:1; RG. 103:1; RG. 203:4; RG. 204:1A; RG. 205:5, 8, and 10(c); RG. 301:6E; RG. 401:1; RG. 402:3(e); and RG. 402:6)

RG. 102:1 Establishment; Appointment of Board Members

Explanatory Comment: The language must be changed to encompass five rather than four Certification Committees.

102:1 Establishment; Appointment. To assist in the administration of the certification function the Supreme Court shall establish, in accordance with the Rules of Court, a Board on Attorney Certification. Pursuant to Rule 1:39-1(a), the Board shall consist of not more than eleven members, all of whom shall be members of the Bar of this State. Board membership shall include the Chairs of each of the [four] *five*
Certification Committees, appointed pursuant to RG. 103:1. The remaining members, who shall not exceed six in number, must be certified in a designated area of practice to be eligible for appointment to the Board.

RG. 103:1 Appointment and Membership of Certification Committees

Explanatory Comment: Language is added to refer to Real Estate Committee and the number of possible members of that Committee.

103:1 Appointment; Membership. The Court shall appoint Certification Committees to assist the Board in the consideration of applications for certification. Members shall be practicing attorneys or retired Judges or Justices. They shall serve for three-year terms and shall be eligible for reappointment for two successive terms. In establishing the Committees, the Supreme Court may appoint some members to an initial term of less than three years. The following Committees are hereby established, with the number of members noted:
   a. Committee on Civil Trial Law (no more than 7 members);
   b. Committee on Criminal Trial Law (no more than 3 members);
   c. Committee on Matrimonial Law (no more than 9 members);[and]
   d. Committee on Workers' Compensation Law (no more than 5 members); and
   e. Committee on Real Estate Law (no more than 9 members).

RG. 203:4 Real Estate Law Requirement

Explanatory Comment: Under this provision, in addition to the general requirements of this section, the applicant is required to demonstrate that in the three years immediately preceding the application, he or she has fully participated in not less than 80 residential real estate transactions, from contract through closing or settlement as attorney on behalf of the buyer or the seller. Of those matters, at least one-third must be in representation of the buyer and one-third in representation of the seller. At least one-third of the transactions must concern single-family homes and not less than ten percent must be from residents in common projects. In light of the differences between North Jersey and South Jersey practices, and to facilitate a more hybrid, broad-based certification, it is recommended that the applicant be permitted to use evidence of other relevant experience to meet a portion of the 80 transaction requirement. This experience
includes: real estate trials; land use law; commercial law; tax appeals; refinancing transactions; and residential leases. Definitions of related real estate terms are provided to assist the applicant with meeting the requirements. The types of information requested to be forwarded with the application for certification will enable the Certification Committee to determine the sufficient level of involvement and qualification of each applicant.

203:4 Real Estate Law Requirements. The applicant must establish that during the three years preceding the application:

a) He or she has substantial and extensive experience as a real estate attorney in the fields of real estate law and devoted not less than one-third of his or her time to the field of real estate law;

b) He or she has fully participated in not less than 80 residential real estate transactions, from contract review through closing or settlement, as counselor and attorney on behalf of a buyer or a seller with at least one-third of the qualifying transactions representing a buyer and at least one-third of the transactions representing a seller;

c) The applicant may count not more than 40 of the 80 transactions toward the experience requirement in matters where he or she has not fully participated but has been involved in a significant part of a residential closing or settlement;

d) At least one-third of the qualifying transactions shall be single-family homes and ten-percent shall be residences in common interest projects.

e) If the applicant does not meet all of the above criteria, he or she may submit evidence of the following experience that will be considered in substitution for the above on a one-to-one basis, but not more than fifty percent:

1) participation in refinancing transactions in which loans are secured by residential real estate;

2) has written or reviewed residential leases, including written letters reflecting the results of the review in the case of a review;

3) participation in trials or hearings that involve real estate contracts, titles, tax appeals, or other real estate issues;

4) handling of cases before a municipal planning board, and/or cases before a municipal board of adjustment; and/or

5) substantial involvement as lead counsel in
commercial real estate transactions.

e) Definitions: For the purpose of meeting the requirements of the Regulation, the following definitions apply:

1) Real estate. The term "real estate" refers to the practice of law dealing with the ownership of, purchase of, sale of, financing of, and use of real estate.

2) Residential Real estate Transaction. The term "residential real estate transaction" refers to a real estate matter that begins at the point of contract and continues through closing.

3) Full Participation. The term "full participation" referred to in RG 203:4(a) is defined as having:

i) written or reviewed not less than 80 residential real estate contracts;

ii) prepared or reviewed the documents required in representing a buyer or seller in not less than 80 residential real estate transactions, one-half of the buyer transactions shall involve the review or preparation of loan documents;

iii) participated in not less than 80 residential real estate closings or settlements as attorney representing a buyer or seller, including preparation of and review of all adjustments to the purchase price and documenting the transaction through the closing or settlement statement;

iv) conducted the title search, or reviewed the detail of the title search, including having reviewed the documents that cause exceptions to title in the title commitment or binder, and advised the client concerning the state of title and any exceptions to marketable title in not less than 80 residential real estate transactions; and

v) reviewed with clients not less than 80 surveys of residential real estate property.

f) Required information.

1) In order to meet the requirements referred to in RG 204:3(a), (b), and (c), the applicant must submit the following:

i) on a form adopted by the Board, a list of the 80 transactions that include the name of the parties to the transaction, the names and addresses of all counsel involved, the date of contract, the date of closing or settlement, and the location of the property;

ii) copies of 5 residential real estate contracts;

iii) copies of 5 sets of exchanges of correspondence during attorney
review based on the five residential real estate contracts submitted;
iv) copies of 5 title commitments based on the five residential real estate contracts submitted;
v) copies of 5 title policies issued based on the five title commitments submitted;
vi) copies of 5 survey prints based on the five real estate contracts submitted;
vii) copies of 5 RESPA statements based on the five real estate contracts submitted;
viii) copies of documents drawn by the applicant in the transactions that are evidenced by the RESPA statements submitted; and
ix) on a form adopted by the Board, 5 written summaries of transactions that involve problems or were other than usual transactions in the applicant's experience, with an explanation of how the applicant solved the problems or handled the unusual situation.

2) In relation to the additional experience referred to in 203:4(d), the applicant should submit the following:
   i) copies of RESPA statements and the names of the attorney or reviewing agent for the lender to demonstrate participation in ten refinancing transactions referred to in 203:4(d)(1);
   ii) copies of letters reflecting the results of any review or the leases themselves if written for the client to demonstrate the three residential leases referred to in 203:4(d)(2);
   iii) written summary on a form adopted by the Board concerning the factual issues of each case, the initial and concluding pleadings; the briefs filed; and the outcome of each matter to demonstrate the trials or hearings referred to in 203:4(d)(3);
   iv) written summary of the facts of each case and the resolution concluding each matter to demonstrate participation in solving at least three residential land use or zoning problems as referred to in 203:4(d)(4); and/or
   v) written summary of each transaction, and descriptions of documents drawn and reviewed during the course of the transaction, and names of attorneys and parties involved to demonstrate participation as counsel in at least three commercial real estate transactions as referred
RG. 204:1A Professional Reputation; Real Estate Law

"Explanatory Comment": The suggested seven references from a combination of lawyers for the seller, lawyers for the buyer, brokers, title company representatives, and lenders would provide a full range of references that will elicit the most meaningful peer review.

204:1A Applicant’s Submission, Real Estate Law.

(a) Each applicant shall submit to the Board the names and addresses of at least seven references, five of the seven being members of the Bar of New Jersey, who can attest to the applicant’s competence as a real estate attorney.

(b) At least two references shall be from attorneys representing opposing parties, buyers, sellers, tenants, landlords, lenders, or municipal boards within the three years preceding the filing of the application.

(c) Two of the seven references shall be from real estate brokers, lenders, or title companies, or their counsel, with whom the applicant has worked or appeared before, or has reviewed the work of the applicant within the three years preceding the filing of the application.

(d) The Board may inquire of other attorneys, judges, or real-estate-related professionals in respect of the professional qualifications and reputation of the applicant.

RG. 205:5 Educational Experience; Real Estate Law Requirements

"Explanatory Comment": Applicants seeking real estate law certification must obtain a minimum of 36 credits of continuing legal education in the field of real estate law, within twelve specific real-estate-related subjects of which the applicant must choose six. These subject areas are common to real estate practice.

205:5 Real Estate Law Requirements. In addition to the general requirements of this Regulation, the applicant must complete in the three years preceding the filing of the application a minimum of thirty-six credits of real estate related continuing legal education programs that must include courses in six of the following categories:

a) basic real estate transactions;

b) secured finance of real estate;

c) title review, including examination and removal of title objections and knowledge and understanding of surveys and the survey process;

d) zoning and land use limitations on the use of real property;

e) contracts and contract enforcement;
f) tax issues, including real estate taxes, tax appeals, and income tax;
g) landlord tenant law;
h) environmental issues;
i) current changes in the law effecting real estate transactions;
j) real estate broker obligations, duties, and responsibilities; and
k) commercial real estate transactions.

205: Videotapes; Audiotapes. [no change]...

Explanatory Comment: Numbering change only.

205: Evaluation Criteria. [no change]...

Explanatory Comment: Numbering change only.

RG. 205: Program Approval

Explanatory Comment: Language has been added to allow for real estate courses to receive CLE credit toward real estate law certification.

205: Program approval. Planned programs should be submitted for Board approval before they are conducted. Requests for pre-approval should be made at least one month prior to the scheduled date of the program. All submissions shall be reviewed to determine whether the program:
   (a) [no change]...
   (b) [no change]...
   (c) [no change]... and
   (d) [no change]...

Programs approved by the Board may be held out as such with the following language:
- "This program qualifies for ______ hours of CLE credit toward New Jersey Civil Trial Attorney Certification;"
- "This program qualifies for ______ hours of CLE credit toward New Jersey Criminal Trial Attorney Certification;"
- "This program qualifies for ______ hours of CLE credit toward New Jersey Matrimonial Attorney Law Certification;" or
- "This program qualifies for ______ hours of CLE credit toward New Jersey Workers' Compensation Law Attorney Certification[.]

This program qualifies for [ ] hours of CLE credit toward New Jersey Real Estate Law Attorney Certification.

The Board reserves the right to withdraw its approval of any program on notice to the sponsoring body.

205:[8] Sponsor Fee. [no change]...

Explanatory Comment: Numbering change only.

RG. 205:10 Continuing Legal Obligations Of Certified Attorneys

Explanatory Comment: Attorneys certified in real estate law will be required to obtain 60 credits of continuing legal education in real estate courses in order to be recertified after five years.

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

(a) General Requirements. [no change]...

(b) Matrimonial Law Requirements. [no change]...

(c) Real Estate Law Requirements. The certified attorney must demonstrate that he or she has completed a minimum of sixty (60) credits of continuing legal education in the areas referred to in RG. 205:5.

RG. 301:6 Scope of Examination

Explanatory Comment: The topics that may be covered on the certification examination are provided in subsection E. They are self-explanatory.

E. REAL ESTATE LAW

1. Basic Principles of Contract Law.
2. Review of Broker-prepared Contracts.
4. The Parties and Their Capacity to Contract.
5. The Form of Ownership of Sellers.
6. The Form of Ownership of Purchasers.
7. Description of the Property.
8. Title and Exceptions to Marketable Title.
9. Contingencies.
10. Time and Place of Closing or Settlement.
11. Scheduling Closing or Settlement and Possession Dates.
12. Preparing the Closing or Settlement Documents, including RESPA and Related Closing Statements.
13. Special Problems ofAbsent Sellers and Buyers.
15. Type of Deed.
16. Affidavit of Title.
17. Resolution of Title Problems.
18. Title Insurance Coverage and Exceptions.
20. Flood Plain Regulation.
22. Municipal Land Regulation.
25. Sale by a "Foreign Person."
26. Reporting of Real Estate Sales to the IRS.
27. Adjustments in Purchase Price.
31. Unauthorized Practice of Law.
32. Attorney Advertising.
33. Legal Malpractice in Real Estate Transactions.
34. Surveys.
35. Inspections.
37. Real Property Taxes.
38. Substantive Real Property Law.

RG. 401:1 Grant of Certification

*Explanatory Comment:* Language is added to this provision to reflect the Board's ability to notify the Court of the successful applicants for certification in real estate law.

**401:1 Grant of Certification.** Successful applicants shall be recommended to the Supreme Court by the Board for certification as a civil trial attorney, criminal trial attorney matrimonial law attorney, [or] workers' compensation law attorney, or real estate law attorney. In certifying applicants, the Supreme Court shall direct the making of an appropriate notation on the roll of attorneys. The Clerk of the Supreme Court shall then issue a document attesting to the attorney's certification, dated as of the entry of the certification on the roll of attorneys.
RG. 402:3 Effect of Certification

Explanation Comment: Subsection (e) has been added to inform the attorney of the proper language to be used to denote his or her certification in real estate law.

402:3 Effect of Certification. Certification or the absence thereof shall not in any way limit the right of an attorney to practice law in that designated area.

(a) [no change]...
(b) [no change]...
(c) A certified matrimonial attorney may use the designation "Certified by the Supreme Court of New Jersey as a Matrimonial Law Attorney;" and
(d) A certified workers' compensation attorney may use the designation "Certified by the Supreme Court of New Jersey as a Workers' Compensation Law Attorney." and
(e) A certified real estate law attorney may use the designation "Certified by the Supreme Court of New Jersey as a Real Estate Law Attorney." An attorney so certified may use the above referenced designations in any dignified manner that complies with the Rules of Professional Conduct of the Supreme Court. An attorney so certified may not use any other combination of words to describe the certification.

RG. 402:6 Division of Fees

Explanation Comment: Language is added to this section to specifically exclude referral fees in residential real estate matters. In view of the relatively minimal charge to the client in a residential real estate matter, a referral fee would be inappropriate. Of course, a certified real estate attorney should be permitted to forward a fee in a non-residential real estate matter. In non-residential real estate matters, the referral fee would encourage inexperienced attorneys to refer the matter to the more experienced practitioner.

402:6 Division of Fees. A certified attorney who receives a case referral from a lawyer who is not a partner in or an associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. Pursuant to Rule 1:39-6(d), referral fees shall not be made by certified attorneys in matrimonial matters or in residential real estate matters.
PROPOSED RULE AMENDMENTS

The following are the proposed amendments to Rule 1:39 et seq. The amendments to Rule 1:39 Introductory paragraph, Rule 1:39-1A, and Rule 1:39-5 are self-explanatory, adding references to real estate certification. Rule 1:39-7(d) is amended to also exclude residential real estate matters from referral fees.

Rule 1:39. CERTIFICATION OF ATTORNEYS

An attorney of the State of New Jersey may be certified as a civil trial attorney, a criminal trial attorney, a matrimonial law attorney, a real estate law attorney, or a workers' compensation law attorney, or in more than one designated area of practice, but only on establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill for each designated area of practice as set forth below.

To assist in the administration of the certification function, the Supreme Court shall establish, in accordance with these rules, a Board on Attorney Certification.

1:39-1A. Certification Committees.

(a) Appointment; Officer. The Supreme Court shall appoint a Civil Trial Law Committee, a Criminal Trial Law Committee, a Matrimonial Law Committee, a Real Estate Law Committee, and a Workers' Compensation Law Committee. The Court shall appoint no fewer than [four] three and no more than eleven members of the bar to serve on each Committee. Committee members shall be appointed for three-year terms. No member who has served four full three-year terms successively shall be eligible for immediate reappointment. Members appointed to fill unexpired terms may be reappointed to four successive full terms. The Supreme Court shall designate one member of each Committee to serve as Chair of that Committee. The Chairs shall serve, ex officio, as members of the Board on Attorney Certification.

(b) ... [no change]

(c) ... [no change]

(d) ... [no change].

1:39B5. Grant; Duration; Withholding of Certification
(a) Grant of Certification. If upon due consideration the Board determines that an applicant is qualified for certification as a civil or a criminal trial attorney, a matrimonial law attorney, a real estate law attorney, or a workers’ compensation law attorney, it shall so report to the Supreme Court, which shall direct the making of an appropriate entry on the roll of attorneys and shall cause to be issued an appropriate document attesting thereto.

(b) Duration of Certification. ... [no change]

(c) Withholding of Certification. ... [no change]

1:39B6. Effect of Certification

(a) Not Exclusive. ... [no change]

(b) Use of Designation. ... [no change]

(c) Restrictions on Designation Use. ... [no change]

(d) Division of Fees. A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney’s law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney’s estate. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. The provision of this paragraph shall not apply to matrimonial law matters or residential real estate matters that are referred to certified attorneys.

(e) Obligation of Certified Attorneys. ... [no change]

CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Court approve the expansion of certification into real estate law and approve the proposed regulations in respect of real estate certification.

Respectfully submitted,

Warren F. Faulk, Chair