

ATTACHMENT A

Minnesota State Bar Association

Certified ▲ Specialist

Civil Trial Law

Standards and Requirements for Specialist Certification and Recertification

The following are standards and requirements for certification and recertification of lawyers as Civil Trial Law Specialists and Senior Specialist. The Minnesota State Board of Legal Certification Plans and Rules, supplemented by these standards, govern initial and continued recognition of specialists in civil trial law.

I. GENERAL REQUIREMENTS AND DEFINITIONS

- A. No standard in any way limits the right of certified civil trial lawyer to practice in all fields of law. Any lawyer has the right to practice in all fields of law, even though recognized as a specialist in civil trial law.
- B. No lawyer need be certified as a civil trial specialist in order to practice in the field of civil trial law. Any lawyer has the right to practice in the field of civil trial law, even though he or she is not recognized as a specialist in that field.
- C. Only lawyers admitted to practice on active status in this state may apply.
- D. Certification is for a period of six (6) years.
- E. Civil Trial Law: The specialty field of civil trial law is the practice of law dealing with the representation of parties before federal and state courts in non-criminal matters.
- F. Trial: Trial used in these standards means a trial in civil court.
- G. Civil Trial Certification Board: The Civil Trial Certification Board (“Certification Board”) is composed of nine (9) members, three (3) members appointed by the Civil Litigation section of the Minnesota State Bar Association, three (3) members by the Minnesota Defense Lawyers Association, and three (3) members by the Minnesota Association for Justice. The Certification Board is responsible for the administration of the Civil Trial Law Specialist program.

II. MINIMUM STANDARDS FOR CERTIFICATION

A. Substantial Involvement.

To become certified as a Civil Trial Law Specialist, a lawyer must demonstrate substantial involvement in civil trial law, defined as follows:

1. **Time Spent in Law Practice and in Specialty.** The applicant must have practiced continuously for five (5) years. During those five (5) years, the applicants must have spent 50% of their full-time practice (or its equivalent) in active participation in civil trial law. At least three (3) years of this practice must immediately precede application unless interrupted as set forth below:

- a. Interruptions of practice for reasons other than disciplinary action totaling six (6) months or less during the three (3) years preceding application, are not be deducted in determining the continuous practice requirement.
- b. For interruptions of practice for reasons other than disciplinary action totaling more than six (6) months during the three (3) year preceding application, the non-practice periods in excess of six (6) months are deducted in determining the continuous practice requirement. However, the applicant may still satisfy the requirement by substituting a time period equal to the deduction, if it immediately precedes the period of non-practice in order to meet the continuous practice requirement.

In any event, an applicant must have been actively engaged in the continuous practice of civil trial law in the two (2) years immediately preceding application.

- c. For former judges, service as a trial or appellate judge of a court of general jurisdiction adjudicating civil trial matters qualifies as continuous law practice and meets the experience and substantial involvement requirement.

2. Experience. The applicant must demonstrate substantial involvement in civil trial law by fulfilling all of the following requirements:

- a. **Jury Trials.** The applicant must have had primary responsibility for two (2) jury trials. A jury trial is defined as a contested court proceeding in state or federal court tried from jury selection to closing argument, involving the presentation of live testimony, and lasting at least two (2) full days. Primary responsibility for a jury trial requires an attorney to conduct multiple critical components. Critical components include jury selection, opening statements, presentation of evidence through examination of witnesses, trial motion practice and closing arguments. If responsibility for conducting these components is shared roughly equally with another attorney, each attorney is considered primarily responsible.

- b. **Ten (10) Trial Units.** In addition, the applicant must have had primary responsibility for ten (10) trial units. Primary responsibility for a jury trial requires an attorney to conduct multiple critical components. Critical components include jury selection, opening statements, presentation of evidence through examination of witnesses, trial motion practice and closing arguments. If responsibility for conducting these components is shared roughly equally with another attorney, each attorney is considered primarily responsible.

- A jury trial counts as two (2) units.

- A court trial counts as one (1) unit. A court trial is defined as a civil proceeding in state or federal court tried before a judge, lasting at least three (3) days.
- Any combination of jury or court trials may be used to accumulate the total of ten (10) trial units.
- Jury trials listed in 2(a) cannot be listed again in 2(b).

c. **Seventy- Five Experience (75) Units.** (Refer to the table on following page.)

	Experience Units			
	2 units	1 unit	¾ unit	½ unit
Jury Trial	2 day jury trial tried to verdict	2 days jury trial work whether or not tried to verdict	1 day jury trial work whether or not tried to verdict	Less than 1 day jury trial work whether or not tried to verdict
		Each 3 days in jury trial work in excess of the initial two days whether or not tried to verdict		
Court Trial		3 day court trial tried through closing Each 3 days court trial work in excess of the initial 3 days whether or not tried through closing	1 day court trial work whether or not tried through closing	Less than 1 day court trial work whether or not tried through closing
Advanced Education	Advanced, intensive trial skills education/demonstration program lasting at least a week given by NITA or similar agency. Call the Certification Manager to verify eligibility.			
Contested Matters			Primary responsibility for: <ul style="list-style-type: none"> ■ 1 day arbitration ■ 1 day administrative hearing 	Contested matters e.g. <ul style="list-style-type: none"> ■ Administrative hearings ■ Evidentiary hearings less than 1 day ■ Appeals ■ Pre- and Post-trial motions Motions made solely by written submission are ineligible. ■ Depositions

For a trial to a jury, whether or not tried to verdict, one (1) unit may be acquired for every additional three (3) days of trial, where the applicant conducted one (1) or more of the following: presentation of evidence; arguments to the court; jury selection; opening statement; and/or final argument.

- i. **Trials to a Court.** One (1) unit may be acquired for each court trial defined in Section II(A)2(b). For a trial to court, whether or not tried to verdict, one (1) unit may be acquired for every additional three (3) days of trial, where the applicant conducted one or more of the following: presentation of evidence; arguments to the court; opening statement; and/or final argument.
- ii. **Advanced Education.** Two (2) units may be acquired for completion of advanced, intensive trial skills and demonstration programs approved by the Certification Board.
- iii. **Trials to a Jury Lasting Less than Two Days, Trials to a Court Lasting Less than Three Days, and Arbitrations and Administrative Hearings Lasting at Least One Day.** Three-fourths (3/4) of a unit may be acquired for handling: trials to a jury lasting at least one (1) day, but less than two (2) days, whether or not tried to a verdict; trials to a court lasting at least one (1) day, but less than three (3) days, whether or not tried to a verdict; and, arbitration and administrative hearings lasting at least one day.
- iv. **Contested Matters.** One-half (1/2) of a unit may be acquired for handling contested matters. Contested matters may include: trials lasting less than one (1) day; evidentiary hearings lasting less than one (1) day; depositions, appeals, arbitration and administrative hearings lasting less than one day; and, motions heard before or after trial.

B. References.

1. To become certified as a Civil Trial Law Specialist, a lawyer must demonstrate to the satisfaction of the Certification Board a reputation among his or her peers as having good character and special knowledge, skills and competence in civil trial law. Certification may be denied based upon information disclosed in references.
2. The applicant must submit the names and addresses of six (6) lawyers, who are not related to or engaged in legal practice with the applicant, to attest to the applicant's competence and involvement in the practice of civil trial law. These lawyers must be substantially involved in civil trial law and familiar with the applicant's practice.
3. At least two (2) of the six (6) must be judges of a court of general jurisdiction in Minnesota before whom the applicant has appeared as an advocate.
4. At least two (2) of the six (6) must be lawyers with whom or against whom the applicant has tried a civil trial matter within the three (3) years immediately preceding application.

5. In addition to the six (6) names of reference supplied by the applicant, reference forms may be sent to other attorneys and judges the applicant has not listed. The Certification Board also reserves the right to require the applicant to submit additional names and addresses of judges before whom he or she has appeared in civil trial matters during the two (2) years immediately preceding application.
6. Completed references will be kept confidential by the Certification Board.

C. Civil Trial Law Education.

The applicant must demonstrate continuing education in the specialty area of civil trial law by completing no less than forty-five (45) hours in continuing legal education courses about civil trial work. These forty-five (45) credits must be completed in the three (3) year period immediately before the application is filed.

D. Examination.

The applicant must pass a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency and experience in civil trial law to justify the representation of special competence to the legal profession and to the public. The examination will be prepared and graded by the National Board of Trial Advocacy and must test professional responsibility and ethics as it relates to civil trial law.

E. Court Memorandum.

To become certified as a Civil Trial Law Specialist, a lawyer must demonstrate to the satisfaction of the Certification Board proficiency and competence in legal writing. The applicant must submit a copy of a court memorandum or brief, which he or she has prepared and filed. This must be a substantial memorandum or brief, stating facts and arguing law, submitted to a state or federal court no more than three (3) years preceding the date of application.

The Certification Board reserves the right to require the applicant to submit additional memoranda. The quality of the applicant's legal writing will be considered in determining whether the applicant is qualified for certification.

F. Disclosure of Conduct.

1. To become certified as a Civil Trial Law Specialist, the applicant must demonstrate to the satisfaction of the Certification Board good character, fitness and ethical behavior. The applicant must disclose:
 - a. Any conviction of a serious crime, regardless of whether the conviction was the result of a plea of guilty or nolo contendere, or of a verdict after a trial, and whether the conviction resulted in imprisonment, probation, fine, or suspension of sentence; and any pending of any proceeding in which the applicant has been charged with a serious crime. Serious crimes include any felonies and any lesser offenses, an element of which involved improper conduct or dishonesty;

- b. Any proceeding that resulted in the applicant being disbarred, suspended, reprimanded, or otherwise subjected to professional discipline by any court, grievance committee, or disciplinary board, or in the applicant's resignation from the bar of any court; and any pending disciplinary proceeding against the applicant before any such disciplinary body;
 - c. Any malpractice claims during the past five (5) years that have resulted in entry of a final judgment or settlement paid.
 2. The Certification Board will determine whether the circumstances of any conviction, disciplinary action, resignation from a bar, or malpractice claim disclosed by the applicant are such that the applicant should be denied certification. In making this determination, the age and experience of the applicant at the time of the incident; the passage of time and the applicant's experience and reputation since the incident; or, the seriousness of the acts or omissions involved and the resolution may be considered.
 3. The Certification Board will determine whether the circumstances of any pending criminal or disciplinary proceeding disclosed by the applicant are such that the applicant should be rejected. The applicant may be admitted to examination while the disposition of any such proceeding is pending.
 4. The failure of an applicant to disclose a conviction, disciplinary action, resignation from a bar, or the pending of a proceeding, is a material misrepresentation and may be cause for rejecting an application or refusing to grant certification. The applicant has a continuing duty to disclose any proceeding that is instituted after the filing of the application.
 5. If an applicant has been disbarred or suspended and later re-issued a license by the Minnesota Supreme Court, the Certification Board will determine whether the applicant should be granted or denied certification based upon the factors set forth in Paragraph 2 of this section. The Certification Board must review and consider all material regarding the applicant filed with the Lawyers Professional Responsibility Board. The applicant must meet the requirement of Section II(A)1 that at least three (3) years of the applicant's practice have immediately preceded application.

III. STANDARDS FOR RECERTIFICATION CIVIL TRIAL SPECIALIST

Recertification is governed by the following standards:

- A. The applicant must demonstrate substantial involvement in the practice of law, of which fifty percent (50%) of a full-time practice (or its equivalent) has been spent in active participation in civil trial law throughout the period of certification. Service as a trial or appellate judge of a court of general jurisdiction adjudicating civil trial matters qualifies as active participation and meets the percentage requirement.

- B. The applicant must have had primary responsibility for one (1) jury or court trial units as defined in Section II(A)2(b). If this requirement is not met, the applicant either must have primary responsibility for a total of at least five (5) civil trial days in court over the period of recertification; or must demonstrate to the satisfaction of the Certification Board civil trial experience equivalent to the trial experience described above in this paragraph. Primary responsibility for a jury trial requires an attorney to conduct multiple critical components. Critical components include jury selection, opening statements, presentation of evidence through examination of witnesses, trial motion practice and closing arguments. If responsibility for conducting these components is shared roughly equally with another attorney, each attorney is considered primarily responsible.
- C. The applicant must provide an affidavit certifying completion of fifty (50) experience units in accordance with Section II(A)2(c).

Note: Section III(B) and (C) are waived for any applicant who has served as a trial or appellate judge of a court of general jurisdiction adjudicating civil trial matters for at least three (3) years of the period of certification.

- D. **References.** The applicant must submit the names and addresses of three (3) lawyers, who are not related to or engaged in legal practice with the applicant, to attest to the applicant's competence and involvement in the practice of civil trial law in accordance with Section II(B). These lawyers must be substantially involved in civil trial law and must be familiar with the applicant's practice. At least one (1) must be a judge of a court of general jurisdiction in Minnesota before whom the applicant has appeared as an advocate. At least one (1) of the lawyers listed shall be a lawyer with whom or against whom you have tried a civil trial matter.

With respect to an applicant who has served as a judge during the certification period, the judge shall provide two (2) references. Both shall be lawyers who have appeared before the applicant as advocates. The references submitted shall attest to the applicant's practice or juridical experience in civil trial law throughout the period since the last day of certification.

In addition, reference forms may be sent to other attorneys and judges in accordance with Section II(B)2).

E. Civil Trial Law Education.

The applicant must demonstrate continuing education in the specialty area of civil trial law by completing no less than thirty (30) hours in continuing legal education courses about civil trial work every three years.

F. Disclosure of Conduct.

- 1. To become certified as a Civil Trial Law Specialist, the applicant must demonstrate to the satisfaction of the Certification Board good character, fitness and ethical behavior. The applicant must disclose:
 - a. Any conviction of a serious crime, regardless of whether the conviction was the result of a plea of guilty or nolo contendere, or of a verdict after a trial, and whether the conviction resulted in imprisonment, probation,

fine, or suspension of sentence; and any pending of any proceeding in which the applicant has been charged with a serious crime. Serious crimes include any felonies and any lesser offenses, an element of which involved improper conduct or dishonesty;

- b. Any proceeding that resulted in the applicant being disbarred, suspended, reprimanded, or otherwise subjected to professional discipline by any court, grievance committee, or disciplinary board, or in the applicant's resignation from the bar of any court; and any pending disciplinary proceeding against the applicant before any such disciplinary body;
 - c. Any malpractice claims during the past five (5) years that have resulted in entry of a final judgment or settlement paid.
- 2. The Certification Board will determine whether the circumstances of any conviction, disciplinary action, resignation from a bar, or malpractice claim disclosed by the applicant are such that the applicant should be denied certification. In making this determination, the age and experience of the applicant at the time of the incident; the passage of time and the applicant's experience and reputation since the incident; or, the seriousness of the acts or omissions involved and the resolution may be considered.
 - 3. The Certification Board will determine whether the circumstances of any pending criminal or disciplinary proceeding disclosed by the applicant are such that the applicant should be rejected. The applicant may be admitted to examination while the disposition of any such proceeding is pending.
 - 4. The failure of an applicant to disclose a conviction, disciplinary action, resignation from a bar, or the pending of a proceeding, is a material misrepresentation and may be cause for rejecting an application or refusing to grant certification. The applicant has a continuing duty to disclose any proceeding that is instituted after the filing of the application.
 - 5. If an applicant has been disbarred or suspended and later re-issued a license by the Minnesota Supreme Court, the Certification Board will determine whether the applicant should be granted or denied certification based upon the factors set forth in Paragraph 2 of this section. The Certification Board must review and consider all material regarding the applicant filed with the Lawyers Professional Responsibility Board. The applicant must meet the requirement of Section II(A)1 that at least three (3) years of the applicant's practice have immediately preceded application.

IV. STANDARDS FOR RECERTIFICATION WITH SENIOR SPECIALIST DESIGNATION

Every lawyer applying to be recertified as a Civil Trial Law Senior Specialist must demonstrate that:

- A. The applicant is admitted to practice law in Minnesota and is on active status.

- B. The lawyer has been certified as a MSBA Certified Civil Trial Law Specialist for a minimum of 12 years (upon completion of second recertification) immediately preceding the application for Senior Specialist.
- C. The applicant must demonstrate substantial involvement in the practice of law, of which fifty percent (50%) of a full-time practice (or its equivalent) has been spent in active participation in civil trial law throughout the period of certification. Service as a trial or appellate judge of a court of general jurisdiction adjudicating civil trial matters qualifies as active participation and meets the percentage requirement.
- D. The applicant must provide an affidavit certifying completion of fifty (50) experience units in accordance with Section II(A)2(c).
- E. **References.** The applicant must submit the names and addresses of three (3) lawyers, who are not related to or engaged in legal practice with the applicant, to attest to the applicant's competence and involvement in the practice of civil trial law in accordance with Section II(B). These lawyers must be substantially involved in civil trial law and must be familiar with the applicant's practice. At least one (1) must be a judge of a court of general jurisdiction in Minnesota before whom the applicant has appeared as an advocate. At least one (1) must be a lawyer with whom or against whom the applicant has appeared as an advocate.
- F. In addition, reference forms may be sent to other attorneys and judges in accordance with Section II(B)(2).
- G. **Civil Trial Law Education.** The applicant must demonstrate continuing education in the specialty area of civil trial law by completing no less than thirty (30) hours in continuing legal education courses about civil trial work every three years.
- H. **Disclosure of Conduct.**
 - 1. To become certified or recertified as a Civil Trial Law Specialist or Civil Trial Law Senior Specialist, the applicant must demonstrate to the satisfaction of the Certification Board good character, fitness and ethical behavior. The applicant must disclose:
 - a. Any conviction of a serious crime, regardless of whether the conviction was the result of a plea of guilty or nolo contendere, or of a verdict after a trial, and whether the conviction resulted in imprisonment, probation, fine, or suspension of sentence; and any pending of any proceeding in which the applicant has been charged with a serious crime. Serious crimes include any felonies and any lesser offenses, an element of which involved improper conduct or dishonesty;
 - b. Any proceeding that resulted in the applicant being disbarred, suspended, reprimanded, or otherwise subjected to professional discipline by any court, grievance committee, or disciplinary board, or in the applicant's resignation from the bar of any court; and any pending disciplinary proceeding against the applicant before any such disciplinary body;

- c. Any malpractice claims during the past five (5) years that have resulted in entry of a final judgment or settlement paid.
 2. The Certification Board will determine whether the circumstances of any conviction, disciplinary action, resignation from a bar, or malpractice claim disclosed by the applicant are such that the applicant should be denied certification. In making this determination, the age and experience of the applicant at the time of the incident; the passage of time and the applicant's experience and reputation since the incident; or, the seriousness of the acts or omissions involved and the resolution may be considered.
 3. The Certification Board will determine whether the circumstances of any pending criminal or disciplinary proceeding disclosed by the applicant are such that the applicant should be rejected. The applicant may be admitted to examination while the disposition of any such proceeding is pending.
 4. The failure of an applicant to disclose a conviction, disciplinary action, resignation from a bar, or the pending of a proceeding, is a material misrepresentation and may be cause for rejecting an application or refusing to grant certification. The applicant has a continuing duty to disclose any proceeding that is instituted after the filing of the application.
 5. If an applicant has been disbarred or suspended and later re-issued a license by the Minnesota Supreme Court, the Certification Board will determine whether the applicant should be granted or denied certification based upon the factors set forth in Paragraph 2 of this section. The Certification Board must review and consider all material regarding the applicant filed with the Lawyers Professional Responsibility Board. The applicant must meet the requirement of Section II(A)1 that at least three (3) years of the applicant's practice have immediately preceded application.
- I. All lawyers that are certified as Senior Specialists must display the designated "Senior" title in all places where the lawyer displays the designation as a Certified Specialist.

V. STANDARDS FOR DECERTIFICATION, SUSPENSION AND DENIAL OF CERTIFICATION

A. Automatic Denial or Revocation of Certification.

The certification of an attorney will automatically be denied or revoked if:

1. The attorney fails to maintain thirty (30) CLE credit hours in the area of civil trial law every three (3) years;
2. The attorney is suspended or disbarred from the practice of law in any jurisdiction in which the attorney is licensed;
3. The attorney is suspended for nonpayment of license fees or for failing to maintain mandatory continuing legal education credits for the attorney's license;
4. The attorney fails to satisfactorily complete recertification; or,

5. The attorney fails to pay the required fee established by the Certification Board.

B. Discretionary Denial Suspension or Revocation of Certification.

The certification of an attorney may be denied, suspended or revoked if:

1. The authority of the certifying agency is rescinded by the Minnesota Board of Legal Certification (“MBLC”). The MBLC has the authority to determine how the certification of attorneys certified by the agency shall be affected;
2. The attorney falsely or improperly announces the specialty area of certification;
3. The attorney falsifies credentials during the certification process, or submits references from persons not familiar with the attorney’s skills;
4. The attorney seeks decertification and advises the MBLC and the certifying agency in writing;
5. Certification was granted contrary to the rules of the MBLC and the Certification Board;
6. The attorney ceases to meet the qualifications for recertification as a specialist;
7. The attorney fails to file the Annual Audit required by the Certification Board, or,
8. Five (5) members of the Certification Board determine that certification should be denied, suspended or revoked because the applicant fails to meet any of the Minimum Standards for Certification set forth in Section II.

VI. STANDARDS FOR REAPPLICATION AFTER A LAPSE IN CERTIFICATION

- A. Specialists who have voluntarily relinquished their certification in accordance with Section V(B)(4) shall meet the following requirements.

Specialists whose certification has been revoked pursuant to Section V(A)(4) failure to satisfactorily complete recertification; V(A)(5) failure to pay fee; V(B)(6) ceasing to meet qualifications for recertification; or V(B)(7) failure to file audit; shall meet the following requirements:

1. If the lapse in certification has been for two (2) years or less, the applicant for re-admission must comply with the criteria set out in Section III(A), III (B), and III (C), Standards for Recertification;
2. If certification has lapsed for more that two (2) years, the applicant for re-admissions must:
 - a. comply with the provisions of Section III(A) and III(B);
 - b. Submit the names and addresses of three (3) lawyers, who are not related to or engaged in legal practice with the applicant, to attest to

the applicant's competence and involvement in the practice of civil trial law in accordance with Section II(B). Such lawyers themselves shall be substantially involved in civil trial law and shall be familiar with the applicant's practice. One (1) shall be a judge of a court of general jurisdiction in Minnesota before whom the applicant has appeared as an advocate and two (2) shall be lawyers with whom the applicant or against whom the applicant has tried a civil trial matter. With respect to an applicant who served as a judge during the previous certification period, all three (3) references shall be lawyers who have appeared before the applicant as advocates. The references submitted shall attest to the applicant's practice of judicial experience in civil trial law throughout the period since the last day of certification. In addition, reference forms may be sent to other attorneys and judges in accordance with Section II(B)(2);

- c. Pass a written examination on the subjects of evidence and professional responsibility as they relate to civil trial law.
- B. A Specialist whose certification has been revoked in accordance with Section V(A)(1) failure to maintain 30 CLE credits; V(A)(2) suspended or disbarred; V(A)(3) suspended for attorney license fee/CLE violations; V. (B)(2) false announcement of certification; V(B)(3) false credentials or references; V(B)(5) certification contrary to MBLC and Certification Board Rules; or V(B)(8) failure to meet Sec. II Minimum Standards voted by five (5) Certification Board members; may be considered for re-admission to the Civil Trial Law Specialist program under terms and conditions established by the Certification Board based on the circumstances of the individual case. Upon request, the Certification Board shall inform such applicants in writing of the standards they must meet in order to be recertified. There will be no right to reconsideration of Certification Board determinations made pursuant to this provision.

VI. RIGHT OF APPEAL

A lawyer who is refused certification, recertification, or whose certificate is suspended or revoked shall have the right to petition the Certification Board for reconsideration in accordance with rules and regulations as it may prescribe, a copy of which may be obtained from the office of the Minnesota State Bar Association.

Minnesota State Bar Association

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