PREPARING FOR THE BOARD CERTIFICATION EXAM

State Bar of Texas

43RD ADVANCED FAMILY LAW COURSE

August 7-10, 2017

San Antonio, Texas

CHAPTER 15

A special thanks to the following attorneys for allowing us to plagiarize portions of their paper "Preparing for the Board Certification" dated August 1-4, 2016: CALI V. SCHWARZ; MAJORIE MAXWELL; & LAUREN E MEHART

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I. INTRODUCTION.

The purpose of this article is to provide a brief overview on how to apply and study for the Texas Family Law Board Certification Application and Examination. The authors encourage each applicant to carefully consider which technique works for him/her and only use the author's suggestions as a guide. It is also crucial to note that the Board Certification Application and Examination differs slightly each year, and therefore this article is only meant to be a guide and a resource. It is most definitely not a comprehensive instructional manual or a mandate as to how to study for the exam because each individual has different study styles that work for his/her personally.

II. THE APPLICATION.

A. Overview and Timeline.

The application for the Board Certification Exam is usually due in early to mid-April of a given year (the 2017 deadline was April 24, 2017). The applicant will generally be notified if their application to sit for the examination has been approved by the end of July or early August of that year. The period between submitting your application and waiting to learn if you will be allowed to take the exam is frustrating but if you are fairly certain that you will be allowed to take the exam then it is never too late to start reading the Texas Family Law Handbook! The actual Board Certification Exam is usually held in late October of that same year in Austin, Texas, with the results being released the following January. The 2016 exam was on October 17, 2016. The period between taking the exam and learning if you passed is nothing short of unnerving because every day you question yourself whether you did enough. The best advice we can offer is to try and take your mind off the exam by keeping busy!

A comprehensive list of the timeline and specifications for taking the Board Certification Exam can be found on the Texas Board of Legal Specialization website at: www.tbls.org.

Generally, an applicant must have practiced a substantial amount of family law for a minimum of five (5) years prior to the examination date of the year in which the application is submitted. The Texas Board of Legal Specialization (TBLS) reviews the applicant's professional conduct to ensure that the applicant completed 60 hours of CLE in the specialty area within the 3 years immediately preceding application, through December 31 of the year of application. The applicant must also submit a minimum of five names and addresses as provided under Section IV of the TBLS Standards for Attorney Certification. Finally, the completed application must encompass family law matters handled three (3) years immediately preceding the application.

1. Professional Misconduct/CLE/Peer and Judicial Review.

The TBLS works with the State Bar of Texas to review professional misconduct and CLE requirements. Thus, be sure to be diligent in recording your CLE through the Texas Bar website. Also, it is imperative that the applicant be forthright in disclosing any misconduct.

2. The Application Contents.

The applicant must meet the following requirements, which must be clearly outlined in their application to sit for the exam:

1. Contested Final Trials/Arbitrations: The applicant must have played the role of lead counsel for a party or child(ren) in a total of 9 contested final trials or binding arbitrations in Texas family law cases in which oral testimony was taken and in which issues were determined by a finder of fact in a court of record or in a binding arbitration, excluding defaults.

    a. At least 4 must have issues regarding property division and at least 4 must have involved appointment or modification of conservatorship.

2. Additional Contested Matters: The applicant must have participated as lead counsel for a party or child(ren) in 30 contested family law matters involving issues pertaining to Texas Family Code, Titles 1 (The Marriage Relationship), 2 (Child in Relation to the Family), 4 (Protective Orders or Family Violence, or 5 The Parent-Child Relationship and SAPCRs), handled and disposed of prior to and without the necessity of a contested final hearing or trial.

3. Two of the Three of the Following: The Applicant must also meet two of the three following categories:

    a. Civil Jury Trials: Handled as lead counsel for a party or child(ren) in 2 Texas civil jury trials at county court at law or district court level. Only one must involve family law and it must have been submitted to the jury for a decision; OR

    b. Civil Appeals: Conducted the appeal of 1 Texas civil case involving family law to a Texas Court of Appeals or Supreme Court of Texas in which briefs were filed by the applicant as lead counsel on behalf of a party or child(ren).

        i. A Mandamus or a Writ of Habeas Corpus may be considered, depending on the mature, complexity, and duration; OR

    c. Mediation: Represented a party or child(ren), or served as mediator or arbitrator in a total of 25 Texas mediations, arbitrations, and/or collaborative law case involving family law.

        i. A Collaborative Law case may be considered, depending on the nature, complexity, and duration.

It is important to know that the applicant who may not meet all of the above requirements may submit an explanation under the "Exceptional Experience" category to explain why the applicant should be able to sit for the exam, despite the fact that the applicant may not technically meet all of the requirements. Under this section, the applicant should discuss any exceptional experience in the area of family law that may make-up for any application requirements. Examples of times applicants should use this tool include not being lead counsel on all of the required cases, but playing a crucial role in the case from all angles, or missing the number of required cases in a particular category only slightly. The TBLS reviews this section carefully, so be sure to be as detailed as possible as to your involvement in cases under this section.

III. THE PREPARATION

Preparing of the exam is unique to each individual. Some believe an early start is essential and some believe waiting until a couple of weeks before the exam is a better use of time. There is no one "right" way to prepare for the exam because each individual has his/her own individual study habits. Therefore, the "right" way could be an early start; the last minute; or somewhere in between!

A. Norma A. Bazán (Fort Worth)

I must admit, to my chagrin, that I was the "last-minute" studier! ☹

I began preparing my application in March of the year I took the exam (2016). It was grueling. I would suggest that you review the application and begin gathering the necessary information at least two months before the deadline to submit the application, so that you do not stress over completing that very, very long application.

I did not begin studying for the exam until one week before the date of the exam. I can

wholeheartedly state that I should have never waited until one week before to study for the exam. I have no excuses other than I kept thinking there was still enough time. Actually, if it were not for my friend, Dana Manry, who took the exam the same time (and passed –YAY DANA), I would have most likely failed! Dana contacted me and asked if I was planning on going to Austin a week before the exam, or just drive to Austin the weekend prior to the exam. Dana had decided to take off the entire week before the exam, stay in a hotel in Austin and just study, study, study. I decided to do the same thing and made a reservation at the same hotel.

As soon as I learned that I would be allowed to take the exam, I did contact several attorneys who had passed the family law board certification for their advice on how to study and/or *what* to study. Every attorney I contacted was more than happy to provide assistance: thank you Gary Nickelson; Chris Nickelson; Kim Naylor; and Natalie Webb!

Once I made it to Austin, Dana and I discussed what would be the best way to study (because for the most part, I like to self-study) and decided to only study together during the evenings. The only study aids I took to Austin were 1) the Texas Family Law Handbook; 2) the State Bar of Texas Family Law Section Reports for the past three years; and 3) a bunch of note pads. I know it sounds crazy, but I forgot to pack my Texas Family Code! I am the true example of what "NOT" to do!

I began studying for the exam by reading the Texas Family Law Handbook during the day between the hours of 7:00am and 4:00pm with a break for lunch. I would meet Dana anywhere between 4:00pm and 5:00pm and we would ask each other questions from our notes. Dana and I studied for at least three hours and then walked to a nearby restaurant for dinner. We had the same waiter each night and became regulars –I digress . . . I would return to my room and read the Section Reports between 10:00pm and 1:00am. This was my routine for the seven days leading up to the day of the exam. During the day while I was reading the Texas Family Law Handbook, I would create outlines and make notes on subjects that I was less familiar with so that I could read them again during lunch. We had another friend, Adam Dietrich, who showed up in Austin during the last couple of days before the exam. He studied with us –taking turns asking questions and discussing topics.

I believe I studied around 13 to 15 hours a day for seven days. I would **never** advise anyone to do that type of studying. My nerves were shot. Each day I became more and more anxious, because I did not believe I had enough time to read (and fully understand) the entire book before taking the exam. My advice (for what it's worth) is to carve out time each week from the time you submit your application and study without distractions. If you have family, they will understand and if you have friends, they better understand that you need that time to study and not to socialize!

As I mentioned, I did the brunt of my studying alone; however, you may be the type of person who studies well in a group. Therefore, try and get your friends to submit their application and then form a study group. You could also ask other people, with whom you are familiar, if they would like to form a study group. Again, there is no "right" way to study and at this juncture, having taken enough exams to last a lifetime, I am sure you have found the "right" way that works for you, so do not deviate from that because your study habits are your friend.

If you take anything away from what I have provided herein, I hope it is that you should 1) be committed to setting aside a certain amount of time each week to study; 2) take the full week off from work before the exam to concentrate on studying (you are no good to yourself or your employer that week anyway!); (3) find a friend who will be taking the exam and study some time together; and most importantly, 4) have a glass of wine after the exam because you survived!!!!!

B. Blaise M. Gormley (Dallas)

I should start by thanking Jonathan Bates for asking me to speak. When he asked, I said that I

absolutely would, but he might want to look elsewhere. It was definitely not my study habits that allowed me to pass. Jonathan told me that the committee was looking for all types. So, here I am.

As everyone says, the application itself is daunting. In fact, the first time I considered applying, I pulled up the application, went through three years of calendars counting trials and mediations, and then put it away for several years. It took me until I was approaching two decades in practice- and the thought it is now or never- to actually apply. The application took several hours over multiple days to complete. If you have not kept a listing of the required case information as to the issues, size of estate, opposing attorneys, hours billed and outcomes of your cases over three years, you will find yourself as I did, piecemealing information from closed files, your billing program, and court websites. It is an arduous task. And, it can be discouraging when chasing down all the details when you may fall short of the numbers required. For those who have experience but do not meet each of the qualifications, I am an example of one who wrote of my experience to make up for being shy a couple of mediations.

As to the actual preparation, mine was primarily experience. Truth be told, in the months preceding the exam, I had enough going on that I planned to ask to defer sitting for a year. In the meantime, I reviewed the areas that could be covered and I read from the Family Law Handbook on occasion. I always have tried to read Sallee Smyth's Interesting Cases and Georganna Simpson's Case Updates as they come out. But, I did not add much to my normal routine as I did not expect to sit for the test. Then, after being encouraged by a few lawyers to take a shot, I decided to go ahead and do it. I began studying in earnest on the Friday preceding the Monday exam. Clearly, I had to prioritize. I focused on the last 2 section reports and those sections of the Family Law Handbook covering my weakest areas.

I suggest that you do not follow my example. It was more than a little unpleasant driving to the testing center under my circumstances. I wanted to walk out when I saw a guy in front of me with a stack of notecards four inches thick.

The message I would impart: prepare through experience. When looking at the list of topics which may be covered, it is overwhelming. The task of covering everything without a prep-course or practice exam seems insurmountable. However, unlike the bar exam where one has no experience as a lawyer, the applicant has practiced a substantial amount of family law for at least 5 years. When considering the exhaustive list of topics, keep in mind that you have touched on most in your practice. To the extent you may not take the exam this year, I suggest seeking experience in areas that are not part of your everyday practice and performing tasks that are not everyday duties of a lawyer. For example, we lawyers send clients to a CPA when considering potential disqualification or recapture in relation to alimony payments. Even so, read the pertinent provisions in the Internal Revenue Code and run the calculations yourself so those provisions of the IRC are not foreign to you when approaching the exam.

Similarly, I suggest that those of you who may not, look for ways to use the rules of civil procedure and civil practices and remedies code in daily practice. Should you use dilatory pleas and summary judgments in your practice, you have that much less to be concerned with in your preparation.

With regard to the exam itself, plan ahead and stick to the plan. Everyone I spoke to ran out of time on the essays. I suggest you go in with the understanding you will not have time to answer each essay as thoroughly as you would like. So, do not get frazzled when you feel you run out of time. Move on and realize there are more points to collect.

I suggest you write a brief bullet point list of issues. Then, write to include each point as quickly as you can do so coherently. I tried not to exceed an hour on each, but broke the rule on the first question. I believed I knew the answer thoroughly and wanted to gather all the points I could. That left me scrambling a bit, as the next

two essay questions were increasingly difficult to me.

Some are for and some against the "data dump" in the essays. Where I was unsure of my stance going in, I did it. As stated, I spent too much time on the first essay. When it came to the third, which was a divorce with every property issue I could imagine, I listed each issue I could find. But, I spent far more time on those I felt I knew thoroughly. And, I may have barely mentioned the last few as the proctor called time.

As to the multiple choice portion, I have not heard of anyone running out of time. That being said, I can see how one might get bogged down. On the exam I took, I believe some questions had two correct answers and some had no correct answer. There were questions that were repeated but with answers worded differently. My approach was to read the question, eliminate as many answers as I could and select the remaining answer that appeared more correct. I did my best to put each question behind me and move on to the next. In other words, I did not mark any to review later as I did not believe it beneficial to start a process of second-guessing my answers.

It is a hard exam. It is supposed to be. But, if you are sitting for the exam, you have the experience and skill set to become board certified.

Good luck!

C. Micah C. Haden (Corsicana)

My experience in becoming board certified is certainly not unique. I am a sole practitioner in a rural area. My family practice is very busy in the spring and fall but the holidays usually bring a lull in new cases. Late in the year prior to taking the board certification exam, I began looking for ways to increase my practice. I decided that I could increase business by becoming board certified. Only one other attorney in my county and surrounding counties was board certified in family law and becoming board certified was something I could offer that most other attorneys could not.

As a result, I undertook the arduous two day task of filling out the application to take the exam. I was later notified that I was approved to sit for the exam. Of course, when I filled out the application, business was slow and I had grand plans to read and outline O'Conner's Texas Family Law Handbook. However, by the time I was notified I was approved to sit for the exam, business had picked up and I no longer had the free time. Additionally, my oldest son was a senior in high school and was playing his last year of football and was involved in every activity he could possibly sign up for.

Prior to beginning the study process, I talked to a number of colleagues that had taken the exam to find out what to expect and what to study. I also got online with the false hope that I could find some released exams or other study aids for taking the exam. Sorely disappointed, I decided that I was going to have to do this the old fashioned way by just reading, outlining and taking notes over the Texas Family Code and O'Conner's Texas Family Law Handbook.

Realizing the monumental task that this study project was going to be, I planned to begin studying several weeks in advance. However, each time I planned to begin my study, there would seem to be a conflict. I would have a contested hearing to prepare for or a school function for one of my three kids. There was always something that seemed to be more important and plus, business was booming as it usually is through the spring, summer and early fall. I no longer had that impending sense of doom motivating me that I have each December – that another client would not walk through my door.

As the exam neared, I realized I no longer had the time to study as I had initially planned. It was time to make some decisions. I had to prioritize what I had to study, what I needed to study and what I simply wanted to study. I had to determine what I knew the least about, study that, and brush up on the rest.

I took the table of contents from the Texas Family Code and O'Conner's and paired it down to the topics with which I was least familiar. I read and outlined each of those sections from the Family Code and O'Connor's. I then studied that outline until I was comfortable that I could intelligently discuss those topics in the context of an essay question. With the remaining time I had left, I read the Texas Family Code sections I believed most likely to be on the exam.

While I believe studying for the exam was helpful, the approach to taking the exam was the most critical thing for me in passing the exam. At exam time, I arrived the evening before and checked in to the hotel. I went out and had a nice dinner and returned to the hotel for a good night sleep. I got up early enough to eat breakfast and get to the exam site with enough time to spare but not so much time to create anxiety.

Notice, I didn't mention anything about studying the night or the morning before the exam. In my opinion, it's too late to help yourself and your time is better spent in relaxing, clearing your mind and planning a logical approach to taking the exam. I decided I would approach each question on the exam in the same manner I approach each new case. I was going to be very deliberate and logical in my approach.

First, prior to beginning each essay, I noted the time so I would not spend too much time on any one question. I wanted to be sure I didn't have to leave a question unanswered due to poor time management.

Second, I read thoroughly each question and noted each legal issue that was identified. I treated this the same as I would a client interview.

Third, I created a mini-outline or bullet point list of points for the answer. Don't overdo this because of time concerns. It may not work for you but I lack for organizational skills and I need reminders.

Finally, I would write an answer using the time-proven Issue/Rule/Analysis/Conclusion (IRAC) approach. In your answer, you want to identify as many of the issues as you can even if you are unsure what the conclusion should be and argue a side. I believe you will receive points for doing so. Remember, unlike a real case, it's not about winning the argument. It's all about point accumulation to get to that passing grade.

With regard to the multiple choice portion of the exam, again I took a logical approach. I would read the question and each answer and eliminate the answers I knew were incorrect. Then, I would choose the correct answer if I could. If I was unsure, I would give it my best guess and mark the question so I could come back to it if time allowed. As with the essay portion of the exam, time management is important on the multiple choice portion. Be careful not to spend too much time on any one question. Make sure you pace yourself.

Keep in mind, while being board certified is an honor, it doesn't make you a better lawyer. Pass or fail, you will be the same lawyer you were prior to the exam.

Good luck on the exam!

IV. TAKING THE EXAM

After all of the preparation in the application and studying process, the exam day seems like a light at the end of the tunnel OR the hangman's noose! Most people feel at this point that they have given it all they have; have not done enough; or just want it to end. Either way, there is nothing more to be done so the morning of the exam you should step away from the notes, study guides, and books (I know some of you will not do that!).

If you chose to stay at the ATT Convention Center, good move because you will be able to walk down to the exam rooms during the morning of the exam. However, some of you may opt to stay elsewhere and that may cause you to worry about getting to the ATT Convention Center in time due to Austin traffic. Our suggestion is to stay at the ATT Convention Center and save yourself that headache. You will be testing in a room with various applicants

from **all** specialty areas (not just family law), so do not feel nervous when the person sitting next to you has different tools at his/her disposal or may be reviewing the tax code. You are ok!

The exam itself is divided into two sections. The first section is the three hour morning essay session that consists of three essays. The afternoon session is three hours of multiple choice questions.

The essay questions oftentimes have subparts that are delineated by point breakdown. Pace yourself and try not to use all of your time on one answer when there are many more points to be collected on other answers. The most important thing to do is to answer every single question and its sub-parts, even if you think you may be incorrect. Focus of what the question is asking and then try to demonstrate your knowledge of the law by applying it to the facts set out in the questions. While you may have heard some people suggest using a "data dump", which means reciting all the law you know of that particular subject in order to collect as many points as possible, the better practice is to craft your own argument based on their application of the law to the facts. Knowledge of the law is key and the grader is looking to see if you have that knowledge.

As for the essay questions, again, try to pace yourself. They are super tricky and oftentimes confusing questions but there is enough time to answer all the questions. One thing is for sure, you are not alone when you walk out of the exam and wonder if you got any of the multiple choice questions right and if you hear someone say "well, that was easy", walk away from that person as quickly as possible because it was not that "easy". The best advice we can give you is not to panic and start going through your notes to see if you answered the essay questions and multiple questions correctly because it will only make you crazy. It is too early in the game to know whether you passed and worrying about it as you walk out of the exam room will leave you feeling defeated. Another suggestion we have is to take off the Tuesday after the exam because you are no good to anyone. Rather, wake up late, do things you have put on hold, and/or sit on the couch and watch mindless shoes on the television!

V. CONCLUSION

There is not an easy or fast way to tell you the best way to prepare of the Family Law Board Certification Exam. It is personal, time consuming and daunting. The authors believe that your hard work, patience, and experience will guide you in your efforts to become a Board Certified in Texas Family Law.

We wish all of you Good Luck!

On a final note, consider using the following resources in preparing for the Board Certification Exam:

Texas Family Code
Texas Family Law Handbook
Family Law Section Reports
Sallee Smyth's Interesting Cases
Case law Updates by Georganna Simpson
Texas Rules of Civil Procedure
Texas Rules of Evidence
Code of Professional Conduct
Previous years Advanced Family Law Articles