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Page printed from: [Texas Lawyer](#)

[Back to Article](#)

Commentary: Board Certification — The Last Big Hurdle

In 1994, Kendall Gray was a briefing attorney at the Texas Supreme Court. When he and his co-clerks looked at the briefs and sat in the courtroom listening to arguments, they often thought the lawyering wasn't especially good, he remembers. They thought they could do at least as well, if not better. But he says he now knows that appellate practice is not as easy as it looks.

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In 1994, I was a briefing attorney at the Texas Supreme Court. When my co-clerks and I looked at the briefs and sat in the courtroom listening to arguments, we often thought the lawyering wasn't especially good. In our chutzpah, we thought we could do at least as well, if not better.

Now, in 2011, I am older. In theory, I am wiser. I look at the Supreme Court briefing and watch the arguments online, and most of the time I am highly impressed.

What has changed? In part, I've grown up a little. I know now that appellate practice is not as easy as it looks. But I think something else is going on here, too. I think part of the reason for the improvement is the growth of the board certification in civil appeals over the past 25 years.

So, how hard is it to get board certified in civil appeals? Pretty darn hard. For me, it was the only test from kindergarten through the bar exam that I thought I might have failed.

Is passing it impossible? Certainly not. But preparation is key.

I probably studied more than 100 hours for the test: half days for about two weeks, full days for a week and the full weekend before the exam studying every waking moment. I hear similar stories from others who have passed.

Are there any hints for how to study? Absolutely, and I would recommend getting them from anyone who has passed the exam.

Lawyers should apply whatever study methods have made them successful in the past, but these are my hints:

- *Start with jurisdiction.* Know all of the ways a question can get to the court of appeals and all of the limitations on any given method. In particular, know the limits to Texas Supreme Court jurisdiction and how to get a question before the Texas Supreme Court.
- *Know the standards of review and error preservation.* It doesn't matter if a lawyer gets the case into the high court if he doesn't preserve the issue for review or if the court likely will decide it against his client.

- *Study the Texas Supreme Court.* Test questions often arise from the court's recent opinions. Study the opinions from the high court over the past three years or so for developments and changes in appellate jurisdiction and procedure.
- *Study the Texas Rules of Appellate Procedure.* Focus on jurisdiction, post-judgment motions, timetables and deadlines. Know any recent rule changes. Study to the point of making flash cards. Flash cards? Yes, flash cards.
- *Do it yourself.* Lawyers should create their own comprehensive outlines of state and federal appellate procedure rather than simply reading commercial sources that exist. The process of organizing the information will create the mental connections needed for success.
- *Study systematically and with repetition.* That means reviewing over and over and over until a lawyer commits to memory things she ordinarily would look up and she easily recalls the styles of key procedural cases from the recent past.

That is an awful lot of work for a piece of paper from a board of the State Bar of Texas. Can certification really be worth all that? I say yes, both on an individual level and for the system as a whole.

Being board certified does not mean I have arrived or that I have stopped learning. But the process of becoming board certified in civil appeals made me a better, more thorough lawyer. The ongoing process of living up to that label and practicing with other specialist lawyers raises the game for the profession as a whole.

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