



2014 Annual Report

California Board of Legal Specialization

**The State Bar of California
180 Howard Street
San Francisco, CA 94105-1617**

2014 ANNUAL REPORT OF THE CALIFORNIA BOARD OF LEGAL SPECIALIZATION

January 1, 2014 – December 31, 2014

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BACKGROUND

THE PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

The Legal Specialization program was created pursuant to California Rule of Court 9.35 to provide a method for attorneys to earn the designation of certified legal specialist in particular areas of law for the purposes of increasing public protection and encouraging attorney competence.

The program was the first of its kind, and it has served as a model for other state programs for certifying legal specialists around the United States.

The program operates pursuant to the following regulatory structure:

- California Rule of Court 9.35, adopted by the Supreme Court, authorizes the State Bar of California to adopt rules to establish and administer a program to certify legal specialists;
- The Legal Specialization Rules, Title , Division 2, Chapter 2, and the Approval to Certify Legal Specialists, Title 3, Division 5, Chapter 4, Approval to Certify Legal Specialists, ("Rules"), adopted by the State Bar of California Board of Trustees ("Trustees"), contain the framework for program operation; and
- Standards ("Standards") for Certification and Recertification provide details unique to each individual certified legal specialty, adopted by the State Bar of California Board of Trustees.

The general requirements to become a certified specialist include:

- passage of a written examination in the certified legal specialty area;
- completion of a course of continuing education in the area of specialty greater than that required of the general members of the Bar;
- demonstration of a broad-based and comprehensive experience in the certified legal specialty area based on completion of a variety of matters in the area of legal specialty; and
- favorable evaluation by other attorneys and judges familiar with the attorney's work in the certified legal specialty area of law.

Certification is valid for a five-year period. After the initial certification period, attorneys must apply for recertification by demonstrating that they have continued to meet task and education requirements similar to those for initial certification. Certified legal specialists are not, however, required to take the examination again after initial certification; instead, they are subject to a heightened education requirement.

The program for certifying legal specialists is self-supporting. As a result, program costs are paid for by annual fees paid to the program, as well as certification, recertification, education provider, and accreditation fees. The program is not funded by State Bar of California General Fund fees.

HISTORY

The program for certifying legal specialists was established to:

- give consumers a tool to use when selecting an attorney. Formal legal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading. Only attorneys who have earned the certified legal specialist designation may hold themselves out as "certified specialists." The public may rely on the fact that certified legal specialists have taken the time and care to demonstrate their proficiency in their practice areas.
- "level the playing field" by allowing attorneys in small firms to better demonstrate their proficiency to the public.
- encourage attorney competence through the development of continuing legal education (CLE) programs. Specialists were required to take CLE in their areas of practice long before the inception of the MCLE requirement for all bar members. Even now, the CLE requirement for certified specialists is significantly higher than the general State Bar of California requirement.

TIMELINE

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|------|---|
| 1970 | California became the first state to establish a system for "certifying" legal specialists. Based on a proposal by the Committee on Legal Specialization, the State Bar Board of Trustees adopted a "Pilot Program" to develop through experience the most feasible and useful certification program. |
| 1972 | The California Supreme Court approved the "Pilot Program," which certified specialists in Criminal Law, Taxation Law, and Workers' Compensation Law. |
| 1973 | The Program administered its first examinations in Criminal Law, Taxation Law and Workers' Compensation Law. |
| 1979 | Family Law was added to the Pilot Program. |
| 1984 | The Board of Trustees voted to recommend that the Supreme Court make the State Bar of California Program for Certifying Legal Specialists ("Program") permanent. |
| 1985 | The California Supreme Court approved the Program. |
| 1986 | Immigration and Nationality Law was added to the Program. |
| 1988 | Estate Planning, Trust and Probate Law was added to the Program. |
| 1993 | Personal and Small Business Bankruptcy Law was added to the Program. |
| 1994 | Based upon a proposal by the California Board of Legal Specialization ("CBLS") to streamline and standardize what had become an overly complex certification process, the Board of Trustees requested that the California Supreme Court repeal the Program and adopt new rule of court 983.5* [Certifying Legal Specialists], an enabling rule containing a provision authorizing the State Bar to adopt rules to establish and administer a program for certifying legal specialists. <i>*The Court renumbered the rule as 9.35 effective January 1, 2007.</i> |

The Board of Trustees also approved new program rules and revised standards for certification and recertification in each specialty area.

1995 The Supreme Court repealed the Program and adopted rule 983.5.

Appellate Law was added to the Program.

1996 Rule 983.5 and the new program rules and revised standards went into effect on January 1.

1997 The program rules and standards were revised again effective June 1. The changes were the result of an ongoing effort to make application and certification processes efficient and cost-effective. For the most part, the changes were "housekeeping" amendments aimed at providing answers to the most frequently asked questions about the Program, incorporating past administrative practices, and making other changes based upon the State Bar's experience operating the Program.

New Rule of Professional Conduct 1-400(D)(6), approved by the Supreme Court on November 25, 1996, also became effective on June 1, 1997. The rule prohibits a member from advertising as a "certified specialist" unless the member is certified either by the California Board of Legal Specialization or by an entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Trustees (the accreditation standards became effective on June 1 as well). The rule also requires the member to state the complete name of the entity that granted certification.

The National Board of Trial Advocacy's certification programs in civil and criminal trial advocacy were accredited by the State Bar.

1998 The American Board of Certification's programs in business bankruptcy law, consumer bankruptcy law, and creditor's' rights law and the National Elder Law Foundation's certification program in elder law were accredited by the State Bar.

1999 The National Board of Trial Advocacy's certification program in family law trial advocacy was accredited by the State Bar.

2002 The American Board of Professional Liability Attorneys' certification programs in accounting, legal malpractice, and medical malpractice were accredited by the State Bar.

2003 The program rules and standards were revised effective January 1. There were two significant changes to the rules: (1) an increase from three to five in the number of years during which the percentage of practice requirement applies; and (2) the addition of criteria relating to discipline and professional negligence that may be used in evaluating an applicant's proficiency and ethics, and the imposition on the applicant of a duty to disclose such criteria within a given time frame.

- 2004 The program rules were revised effective July 24 to (1) allow suspension and revocation of certification based on non-disciplinary regulatory actions; (2) give voting rights on the CBLS to all Advisory Commission chairs (prior to the change, only six of the eight chairs voted on a rotating basis); and (3) allow release of confidential information on an applicant's file to the Office of Chief Trial Counsel, which represents the CBLS when an applicant appeals the denial of his or her certification or recertification, without first having to request approval from the Board of Trustees. The Appellate Law Standards were also revised to clarify the education requirement.
- Effective September 11, the name of the Personal and Small Business Bankruptcy Law certified specialty was changed to Bankruptcy Law.
- 2005 The National Association of Counsel for Children's certification program in juvenile law (child welfare) was accredited by the State Bar.
- The program rules were revised effective October 22 to extend the approval period for CLE activities to two years and for approved providers to three years. This change conforms the approval periods to those for MCLE activities and providers.
- 2006 Franchise and Distribution Law was added to the program.
- 2007 The National Board of Trial Advocacy/National Board of Legal Specialty Certification's program in social security disability advocacy was accredited by the State Bar.
- 2008 Admiralty and Maritime Law and Legal Malpractice Law were added to the program
- 2009 The Program administered its first certified specialist examinations for Admiralty and Maritime law and Legal Malpractice Law.
- 2010 Alternate certification criteria were issued for Admiralty and Maritime Law
- 2011 The program began an evaluation process to increase efficiency through improved use of technology. The first project adopted was paperless meeting technology for the California Board of Legal Specialization and its advisory commissions.
- 2012 The program pioneered new examination development and grading procedures to streamline the process and preserve the quality.
- 2013 Revised program rules were adopted to conform to State Bar style and with current standards of practice to ensure consumer protection. Examination registrations increased over 20%.
- 2014 Revised program rules went into effect on January 1, 2014.
- In accordance with the revised program rules, a new governance structure was implemented, which increased the length of terms for members of the CBLS from three years to four years, eliminated the Advisory Commission Chairs as one-year members and decreased the size of the CBLS to fifteen members.
- Specialist reporting schedules were changed to conform to MCLE reporting schedules.

NUMBER OF CERTIFIED SPECIALISTS

As of December 31, 2014 the following were the number of certified specialists:

| Specialty Field | Number of Certified Specialists |
|--------------------------------------|--|
| Admiralty & Maritime Law | 37 |
| Appellate Law | 292 |
| Bankruptcy Law | 143 |
| Criminal Law | 406 |
| Estate Planning, Trust & Probate Law | 961 |
| Family Law | 1328 |
| Franchise & Distribution Law | 50 |
| Immigration & Nationality Law | 177 |
| Legal Malpractice Law | 88 |
| Taxation Law | 337 |
| Workers' Compensation Law | 1026 |
| TOTAL | 4845 |

DUAL SPECIALISTS

Eighty-seven certified specialists hold dual certification. The types of dual certification are as follows: taxation/estate planning, trust and probate (65), criminal/appellate (7), family/appellate (2), family/estate planning, trust and probate (4), taxation/immigration and nationality (1), family/bankruptcy (1), family/workers' compensation (1), family/criminal (1), bankruptcy/estate planning, trust and probate (1), taxation/bankruptcy (1), appellate/taxation (1), appellate/legal malpractice (1), and admiralty/workers' compensation (1).

JUDICIAL SERVICE

Certified specialists engaged in judicial service (those serving as judges of courts of record or in a quasi-judicial capacity, such as court commissioners or referees) are allowed under the program rules to have their certification "tolled." This tolls the five-year recertification requirement and exempts judges from the annual certified legal specialist fee as long as they remain on judicial service. The program is honored to have 210 certified specialists who are currently engaged in judicial service. Among them are 78 certified specialists in family law, 69 in criminal law, 41 in workers' compensation law, 9 in appellate law, 5 in taxation law, 5 in immigration and nationality law, 2 in estate planning, trust and probate law, and 1 in bankruptcy law.

VOLUNTEERS ARE CRITICAL TO THE PROGRAM'S SUCCESS

From the development of the initial proposal to create a new certified legal specialty area to the administration of existing certified legal specialty areas, the Program is led by volunteers assisted by the Legal Specialization Department of the State Bar of California's Office of Admissions. During 2014, California Board of Legal Specialization ("CBLS") and the Advisory Commissions for each of eleven certified specialty areas administered the program

The CBLS and each of the Advisory Commissions met throughout the year in Northern and Southern California State Bar of California offices. Volunteers have historically served for three-year terms. Under the new rules adopted effective January 1, 2014, terms adjusted to four years, consistent with those of the Committee of Bar Examiners. These longer terms recognize the time needed to develop an expertise in examination development.

From time to time, consulting groups are appointed by the Board of Trustees on an ad hoc basis to develop and make recommendations on certification standards for potential new certified legal specialty areas. At this time, there are no such consulting groups.

CALIFORNIA BOARD OF LEGAL SPECIALIZATION (CBLS)

The CBLS, appointed by the Board of Trustees, performs overall administration of the program, recommends new certified specialty areas and modifications to existing certified legal specialty areas to the Board of Trustees, and acts upon the recommendations of the Advisory Commissions for approval or denial of certification and recertification. The CBLS implemented a new structure under rules effective January 1, 2014, as described below.

The CBLS is composed of 15 members, at least three of whom must be public members. Up to two of the attorney members can be non-specialists.

The officers are a Chair, a Vice-Chair and an Advisor (Immediate Past Chair). For the 2014-2015 committee year beginning September 2014, Curtis Harrington, Long Beach, is serving as Chair, Ricardo Goñi, West Sacramento, is serving as Vice Chair and Bryan Hartnell, Redlands, is serving as advisor and immediate past chair. This is the first time that a public member has served as an officer of the CBLS.

ADVISORY COMMISSIONS

The Advisory Commissions, also appointed by the Board of Trustees, develop and grade the certified specialty examinations, review certification and recertification applications, and act on applications from providers who wish to offer legal specialization educational credit. Each of the Advisory Commissions is composed of nine members, at least one of whom is a public member. One of the attorney members may be a non-specialist.

COUNCIL OF PAST CHAIRS

In Fall 2014, the Council of Past Chairs was retired. All past members are encouraged to participate actively as their time allows.

STAFF

The CBLS is supported by State Bar staff located in The State Bar of California offices at 180 Howard Street in San Francisco, California. (See Appendix B for State Bar Staff providing support to the CBLS).

The Legal Specialization program is administered by staff in the Legal Specialization Department of the State Bar's Office of Admissions. The day-to-day operations of the program include processing applications for certification and recertification, as well as applications to provide legal specialist continuing education. Staff also answers inquiries about the program from the public and members of the Bar, provides administrative support to the CBLS, Advisory Commissions, and Consulting Groups, maintains the Legal Specialization web site, and assists with program outreach.

BUDGET/FISCAL MATTERS

The program is mandated to be self-supporting. It is completely funded by fees collected from applicants, certified specialists, education providers, and accredited organizations. The program is not subsidized by attorney dues or other general fund revenues collected by the State Bar of California.

The annual budget, which runs from January through December, is prepared in accordance with the State Bar of California's policies and directives and is subject to approval by the State Bar's Board of Trustees. For 2014, total revenues were \$2,057,395, in line with the budgeted revenues of \$2,034,031. Total expenses for the program were \$1,270,891 versus \$1,809,556 that was budgeted, due to one-time salary savings, and a delay of planned outreach expenditures.

ACTIVITIES OF THE PROGRAM

CONTINUING LEGAL EDUCATION

This program piloted the idea of requiring continuing education for attorneys long before there were general Minimum Continuing Legal Education (MCLE) requirements. The program encourages the creation of high-level educational courses that provide life-long learning for both new and experienced practitioners.

One of the important functions of each of the Advisory Commissions is to supervise the quality of proposed continuing legal education programs that may be attended by individuals who need to meet the requirements of certification or recertification. Applicants for certification are required to complete 45 hours of approved education activities during the three years immediately preceding the initial application. Applicants for recertification are required to complete 60 hours of education in the substantive area of their certified legal specialty during each five-year certification term.

The Advisory Commissions are authorized to approve providers of education programs for a period of up to three years. To qualify as a Multiple Activity Provider, the provider must demonstrate that, in the two years immediately preceding application, the provider presented at least four qualifying education programs that complied with the requirements for education program content. Like MCLE, Multiple Activity Legal Specialization Provider status allows providers to offer an unlimited number of substantively relevant programs for legal specialization credit in the approved area of law for a specified three-year period.

EXAMINATIONS

Examinations take place in alternate odd-numbered years. No examination was scheduled for 2014. Instead, the program prepared for the examination planned for October 27, 2015 in Oakland and Pasadena.

ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS

Rule of Professional Conduct 1-400(D) (6) prohibits a member from advertising as a "certified specialist" unless the member is certified by the California Board of Legal Specialization or another entity accredited by the State Bar to evaluate applications to become certified legal specialists pursuant to standards adopted by the State Bar of California Board of Trustees. The following certification programs have been accredited pursuant to the Rules Governing Accreditation of Specialty Certification Programs for Attorneys:

| Certifying Organization | Certification Programs | # of CA Attorneys Certified |
|--|--|------------------------------------|
| American Board of Certification | Business bankruptcy law Consumer bankruptcy law Creditors' rights law | 35 19 8 |
| American Board of Professional Liability Attorneys | Legal professional liability Medical professional liability | 4 32 |
| National Association of Counsel for Children | Juvenile law (child welfare) | 138 |
| National Board of Legal Specialty Certification | Civil trial advocacy Criminal trial advocacy Family law trial advocacy Social Security disability law | 90 10 3 4 |
| National Elder Law Foundation | Elder law | 28 |
| | TOTAL | 371 |

INTERNET

The program's website can be reached from the main State Bar of California website, or by visiting www.californiaspecialist.org. Visitors to the State Bar's Web site can access information about the Legal Specialization Program and search for a certified specialist by area of law and geography both from the Attorney Search Function and from the Legal Specialization portal. Attorneys interested in becoming certified can use the Legal Specialization Portal to learn about the application process, the program's rules and regulations, and the standards for certification.

PUBLIC AWARENESS

The program continued its established public awareness activities:

- funding of public radio program, Your Legal Rights, on KALW 91.7, San Francisco, hosted by Chuck Finney, a weekly call-in format that features certified specialists as guests at least once a month and Call A Lawyer Night featuring certified specialists, available on KALW 91.7 FM San Francisco and via NPR.org podcast.
- publication of consumer pamphlets that certified legal specialists and others can use to communicate the benefits of certified legal specialization
- recognizing specialists who have been certified for 20 and 30 years
- teaching an outreach course designed to acquaint new attorneys with the Program for Certifying Legal Specialists.
- distributing information at local bar associations and relevant conferences to increase program awareness
- creating social media pages via services such as LinkedIn to increase public and attorney awareness of the program
- redesigning website to create a more user friendly experience
- upgrading the State Bar certified specialist search to allow for searches on a number of criteria in addition to the previously available county search
- support for private test preparation classes for more of the legal specialist examinations.

CBLS LOGO



The CBLS logo is registered as a certification mark with the U.S. Patent and Trademark Office. Under California Rule of Professional Conduct 1-400(D) (6), attorneys who hold themselves out as certified specialists must identify the certifying body. Certified specialists may use the logo in their advertising instead of, or in addition to, spelling out "The State Bar of California Board of Legal Specialization." Use of the logo is intended to present a consistent, identifiable image for specialization apart from regular Bar membership in order to promote recognition of certified legal specialist certification among both attorneys and consumers of legal services. The trademark registration was renewed successfully in 2014.

RECOGNITION PROGRAMS

The Board of Legal Specialization has established recognition programs for certified specialists who have been continuously certified by the CBLS in a particular specialty area for 20 and 30 years and for those on judicial service.

Those honored in 2014 were thirty-one certified specialists who reached the 30-year mark, including six certified criminal law specialist, eleven certified family law specialists, eight certified taxation law specialists and six certified workers' compensation specialists. . The 164 twenty-year honorees included twenty-three certified workers' compensation law specialist, seven certified bankruptcy law specialists, nine certified criminal law specialists, thirteen certified taxation law specialists, three certified immigration and nationality law specialists, sixty-nine certified family law specialists, and forty certified estate planning, trust and probate law specialists

FOCUS FOR THE UPCOMING YEAR

During this reporting period of January 1, 2014 to December 31, 2014, the CBLS has identified the following area for further study and potential action.

INCREASING PUBLIC AND ATTORNEY AWARENESS

The CBLS continues to explore ways to reach practitioners, consumers, and education providers to increase awareness of the program and its benefits. During 2014, the following goals were achieved:

Grading results were released on time, even as the number of results to be delivered increased by 17%

- Increased outreach to new attorneys through seminars, electronic means, and updated printed materials

In 2015 additional methods for outreach will be considered, including:

- Exploring the role of technology in improving efficiency
- Increasing electronic outreach via social media and video

Roster of Volunteers for the Legal Specialization Program
Board Year 2014-2015

California Board of Legal Specialization

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