



# The State Bar of California

## **2020 Annual Report of the California Board of Legal Specialization**

**January 1, 2020–December 31, 2020**

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## BACKGROUND

### THE PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

The California Rules of Court, rule 9.35 requires the State Bar of California to establish and administer a program that would allow attorneys to earn the designation of certified specialist in particular areas of law. The dual purposes of the legal specialization program are to increase public protection and promote attorney competence.

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

Following the adoption by the Supreme Court of rule 9.35, the State Bar developed the following regulatory structure:

- Rules of the State Bar, The Legal Specialization Rules, Title 3, Division 2, Chapter 2, and the Approval to Certify Legal Specialists, Title 3, Division 5, Chapter 4, ("Rules"), contain the framework for program operations; and
- Standards ("Standards") for Certification and Recertification provide requirements for certification and recertification in each of the 11 legal specialty areas<sup>1</sup>.

The general requirements to become a certified specialist include:

- passage of a written one-day examination in the certified legal specialty area;
- having practiced law for at least five years, spending at least twenty-five percent of the time given to occupational endeavors practicing law in the specialty area;
- completion of a course of continuing education in the area of specialty greater than that required of the general licensees 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.

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<sup>1</sup> The standards, adopted by the Board of Trustees in the same manner the Rules of the State Bar are adopted, are available on the State Bar's website alongside the rules. See <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-the-State-Bar/Title-3-Programs-and-Services>.

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 experience requirements similar to those for initial certification. Certified specialists are not, however, required to take the examination in order to be recertified; instead, they are subject to a heightened education requirement.

The program for certifying legal specialists is fully 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 does not receive any State Bar of California General Fund revenue.

## HISTORY

The program for certifying legal specialists was established to:

- give consumers an independent means to verify an attorney's qualifications and experience in a specialty area of law.
- 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 licensees. Even now, the CLE requirement of 36 hours in the specialty field for certified specialists is significantly higher than the general State Bar of California requirement of 25 hours in any field.

## TIMELINE

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 (hereafter, "Program") permanent.
1985	The California Supreme Court approved the Program.

- 1986 Immigration & Nationality Law was added to the Program.
- 1988 Estate Planning, Trust & Probate Law was added to the Program.
- 1993 Personal & 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<sup>2</sup> [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.
- 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 pursuant to the recommendation of the Board of Trustees.
- 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 licensee from advertising as a "certified specialist" unless the licensee 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 licensee 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.

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<sup>2</sup> The Court renumbered the rule as 9.35 effective January 1, 2007

- 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 & 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 & Distribution Law was added to the Program.
- 2007 The National Board of Trial Advocacy's program in social security disability advocacy was accredited by the State Bar.
- 2008 Admiralty & Maritime Law and Legal Malpractice Law were added to the Program.

- 2009 The Program administered its first legal specialist examinations for Admiralty & Maritime Law and Legal Malpractice Law.
- 2010 Alternate certification criteria were issued for Admiralty & 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 CBLS and its advisory commissions.
- 2012 The Program pioneered new examination development and grading procedures to streamline the process while preserving the quality of the examinations.
- 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 percent.
- 2014 Revised program rules went into effect on January 1.
- 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.
- 2016 The Program prepared to modernize IT infrastructure and evaluate future options for examination delivery. The plan will be implemented starting in 2017.
- 2017 The Program administers the largest examination to date. It also begins the process of investing reserves, including funding a one-time annual fee waiver, funding a reduction examination in fees, hiring a vendor to create a new computer system, and beginning work on an improved examination bank.
- The Board of Trustees approved an updated process and fee schedule for approval of Legal Specialist Continuing Legal Education (LSCLE)<sup>3</sup>.
- 2018 The Board of Trustees approved to retain the program for certifying legal specialists, and to streamline its operations<sup>4</sup>.

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<sup>3</sup> The recommendation, adopted by the Board of Trustees at its July 13, 2017 meeting, is available on the State Bar's website. See <http://board.calbar.ca.gov/Archive.aspx>

<sup>4</sup> The recommendation, adopted by the Board of Trustees at its September 13, 2018 meeting, is available on the State Bar's website. See <http://board.calbar.ca.gov/Archive.aspx>.

2019 In conjunction with the Office of Admissions, the Program launched a new computer system, the Admissions Information Management System (AIMS), to significantly improve the applicant experience in registering with the State Bar and the legal specialization program.

Title 3, Division 2, Chapter 2 (Legal Specialization) of the State Bar Rules were updated to effectuate the changes to the responsibilities of the CBLs, notably, the discontinuance of the eleven advisory commissions.

The Program developed a Legal Specialization Examination Development and Grading (LSEDG) team and administers its first examination that utilized paid examination developers and graders. In addition, the Program conducted a grading and graders study with the State Bar's psychometrician.

2020 The Program conducted its first release of Legal Specialist Examination results electronically through the Admissions Applicant Portal.

The State Bar Psychometrician, Research Solutions Group, finished a study<sup>5</sup> of Legal Specialist Examination Graders and Grading Practices.

The Program, along with the entire State Bar, transitioned to a general remote work environment as a result of COVID-19.

### NUMBER OF CERTIFIED SPECIALISTS

The following table provides the number of specialists by specialty area as of December 31 in each of the last five years:

Specialty Area	Number of Certified Specialists				
	2016	2017	2018	2019	2020
<b>Admiralty &amp; Maritime Law</b>	39	38	36	35	29
<b>Appellate Law</b>	282	316	310	316	317
<b>Bankruptcy Law</b>	156	166	166	171	170
<b>Criminal Law</b>	342	420	339	336	335
<b>Estate Planning, Trust &amp; Probate Law</b>	971	1,019	1,043	1,064	1,072
<b>Family Law</b>	1,325	1,423	1,372	1,379	1,368
<b>Franchise &amp; Distribution Law</b>	52	53	51	51	48

<sup>5</sup> Results of the study are Closed pursuant to Business & Professions Code § 6026.7(c)(2).



Specialty Area	Number of Certified Specialists				
	2016	2017	2018	2019	2020
<b>Immigration &amp; Nationality Law</b>	200	214	224	239	233
<b>Legal Malpractice Law</b>	93	96	109	112	110
<b>Taxation Law</b>	317	324	313	310	306
<b>Workers' Compensation Law</b>	991	1,073	1,010	1,041	1,022
<b>TOTAL</b>	<b>4,768</b>	<b>5,142</b>	<b>4,973</b>	<b>5,054</b>	<b>5,028</b>

### DUAL SPECIALISTS

Forty-eight certified specialists held dual certification in 2020. The types of dual certification observed were as follows: taxation/estate planning, trust & probate (32), appellate/criminal (4), family/estate planning, trust & probate (1), appellate/family (2), bankruptcy/taxation (3), criminal/family (1), appellate/taxation (1), bankruptcy/criminal (1), bankruptcy/estate planning, trust & probate (1), immigration & nationality/workers' compensation (1), and appellate/legal malpractice (1) dual specialist. In 2019 and 2018, the number of specialists holding dual certifications was also 90 each year.

### 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 all requirements while they are serving as neutrals rather than advocates. The program is honored to have 237 certified specialists who are currently engaged in judicial service. Among them are 81 certified specialists in family law, 75 in criminal law, 53 in workers' compensation law, 13 in appellate law, five in immigration and nationality law, four in taxation law, three in estate planning, trust and probate law, one in bankruptcy law, one in legal malpractice law, and one is a dual specialist in family law/estate planning, trust and probate law. The number of certified specialists engaged in judicial service has remained fairly consistent over the years.

### SUBJECT MATTER EXPERTS ARE CRITICAL TO THE PROGRAM'S SUCCESS

The program is overseen by the CBLS with advice from subject matter experts on the advisory commissions, while day-to-day operations are handled by the Office of Admissions staff.

The CBLS and each of the advisory commissions met throughout the year in Northern and Southern California State Bar of California offices, though technology has reduced the need for in-person meetings. Until the eventual discontinuation of the advisory commissions, here was one advisory commission for each certified specialty area of law.

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 is composed of seven members, where up to two may be public members. The attorney members are a combination of certified specialists and non-specialists.

The CBLS officers are a Chair and Vice-Chair. Appointments for the 2020-2021 committee year beginning September 25, 2020: Public Member Robert Hershenson, Van Nuys, is serving as Chair; Mark A. Lester, Camarillo, is serving as Vice-Chair; and newly appointed Public Member, Jake Yoon, Inglewood, is serving a four-year term.

### **LEGAL SPECIALIZATION WORKING GROUPS**

Legal Specialization Working Groups, appointed by Staff, are groups of specialists in their certified area of law that review complex certification and recertification applications. Working Groups also conduct the final review of the Legal Specialist Examination before each administration. As the role of a working group member, their participation is solely a voluntarily.

### **STAFF**

The CBLS is supported by State Bar staff within the Office of Admissions. The day-to-day operations of the program performed by staff include processing applications for certification and recertification, as well as applications to provide LSCLE activities. Staff responsibilities also include answering inquiries about the program from the public and licensees of the State Bar, providing administrative support to the CBLS, advisory commissions, and Consulting Groups, and maintaining the Legal Specialization website.

### **BUDGET/FISCAL MATTERS**

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

For 2020, total revenues were \$2,162,592 versus the budgeted revenues of \$2,014,940. This happened, in part, due to higher applications for certification received than expected. Total expenses for the program were \$1,465,372 versus \$2,099,300 that was budgeted. Savings occurred from salaries and software expenses not realized that year. In 2019, total revenues were \$2,225,238, and total expenses were \$1,465,372.

## 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.

Applicants for certification are required to complete 45 hours of approved education activities during the three years immediately preceding submission of their application for initial certification. As part of the requirements for maintaining certification, specialists must complete and report 36 hours of Legal Specialist Continuing Legal Education (LSCLE) in the substantive area of their certified legal specialty during each three-year compliance period. The compliance period for each specialist matches his or her MCLE compliance period, and all specialists are responsible to complete MCLE, including the special subject requirements (although most LSCLE credit can be counted toward the MCLE compliance requirements as well).

The CBLS is authorized to approve providers of education programs to confer LSCLE approved education for a period of up to three years. To qualify as a Multiple Activity Provider (MAP), the provider must demonstrate that, in the two years immediately preceding its application, the provider presented at least four qualifying education programs that complied with the requirements for educational program content. As with MCLE MAP status, LSCLE MAP 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

The Legal Specialist Examination (LSX) is administered in odd years during the month of October. The LSX was administered on October 22, 2019 in Oakland and Pasadena to 526 applicants. Results were released to all applicants using the Admissions Applicant Portal on March 13, 2020.

### ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS

Rule of Professional Conduct 1-400(D)(6) prohibits a licensee from advertising as a "certified specialist" unless the licensee is certified by the CBLS 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<sup>6</sup>:

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<sup>6</sup> Rules of the State Bar, Title 3, Division 5, Chapter 4-Approval to Certify Legal Specialists.

Certifying Organization	Certification Program(s)	# of CA Attorneys Certified
<b>American Board of Certification</b>	Business bankruptcy law	32
	Consumer bankruptcy law	38
	Creditors' rights law	6
<b>American Board of Professional Liability Attorneys</b>	Legal professional liability	8
	Medical professional liability	29
<b>National Association of Counsel for Children</b>	Juvenile law (child welfare)	171
<b>National Board of Trial Advocacy</b>	Civil trial advocacy	69
	Criminal trial advocacy	8
	Family law trial advocacy	6
	Social Security disability law	6
<b>National Elder Law Foundation</b>	Elder law	30
	<b>TOTAL</b>	<b>403</b>

## INTERNET

### Legal Specialization Website

The Program's public information website can be reached from the main State Bar of California website, or by visiting [www.calbar.ca.gov/attorneys/legal-specialization](http://www.calbar.ca.gov/attorneys/legal-specialization). Visitors to the State Bar's website can access information about the Legal Specialization Program. There they can search for a certified specialist by area of law and geographic location, both from the Attorney Search function, and from the Legal Specialization portal. Attorneys interested in becoming certified as specialists can use this site to learn about the Program's rules and regulations, the standards for certification, and the general application process.

### Admissions Applicant Portal

The Admissions Applicant Portal (Applicant Portal) replaced the Office of Admissions' old computer system and has significantly improved the applicant experience in the administration of the legal specialization program. The Applicant Portal moved a majority of the program's paper processes onto an electronic platform. Licensees can register for the Legal Specialist Examination, apply for initial certification or recertification, report LSCLE Compliance, or submit other legal specialization requests all online in the Admissions Applicant Portal. All applicants can also track the status of any pending applications or requests online. Current certified specialists can now find their initial certification dates, current certification terms, LSCLE compliance dates, and payment history, all of which weren't previously readily available to specialists.

## PUBLIC PROTECTION

The program continues to fulfill its mission of public protection by sharing the benefits of certification to consumers through a range of means including:

- publication of consumer pamphlets that certified specialists and others can use to communicate the meaning of a certified legal specialization and how it can help consumers; and
- distributing information about certification at attorney conferences to provide new attorneys with guidelines to allow them to prepare for certification.

## 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 licensing in order to help consumers identify those who took the steps to earn and maintain certification. The trademark registration was renewed successfully in 2014, providing consumers with an official, consistent means to identify a certified specialist.

## FOCUS FOR THE UPCOMING YEAR

During this reporting period of January 1, 2020 to December 31, 2020, the CBLS identified the following areas for further study and potential action: expanding program capacity to increase public protection. In particular, for the upcoming year, the CBLS will be exploring:

- Establish a program to encourage attorney competence by certifying as legal specialists attorneys who have demonstrated proficiency in specified areas of law. Develop testing and legal education criteria for specialists. Recommend program rules and provide policies and guidelines for certification of specialists.
- Recommend approval of additional areas of legal specialization and their related certification standards.
- Recommend other entities to grant certification.

**APPENDIX A****ROSTER OF SUBJECT MATTER EXPERTS FOR THE LEGAL SPECIALIZATION PROGRAM****Board Year 2020—2021****California Board of Legal Specialization**

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<b>Robert Hershenson</b>	Chair	Van Nuys
<b>Mark A. Lester</b>	Vice Chair	Camarillo
<b>Norma L. Acosta</b>	Member	San Jose
<b>Jeffrey T. Hammerschmidt</b>	Member	Fresno
<b>Avi Levy</b>	Member	West Hollywood
<b>Natalie P. Vance</b>	Member	Sacramento
<b>Jake Yoon</b>	Member	Inglewood

**APPENDIX B****LEGAL SPECIALIZATION****2020 State Bar Staff Providing Support to the California Board of Legal Specialization****Legal Specialization Unit**

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<b>Amy C. Nuñez</b>	Director	Admissions
<b>Audrey Ching</b>	Program Director I	Admissions
<b>Lisa J. Cummins</b>	Program Manager III	Admissions
<b>Janelle Delacruz</b>	Staff	Legal Specialization
<b>Huascar Galan</b>	Staff	Legal Specialization
<b>Adrian Galang</b>	Staff	Legal Specialization
<b>Ana Moreno</b>	Staff	Legal Specialization