



# The State Bar *of California*

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## **OPEN SESSION AGENDA ITEM IV.G. SEPTEMBER 2021**

**DATE:** September 10, 2021

**TO:** Members, California Board of Legal Specialization

**FROM:** Amy C. Nuñez, Director, Office of Admissions

**SUBJECT:** Review of Letter and Application for Proposed New Specialty Application

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### **SUMMARY**

The California Lawyer's Association submits a Letter and Proposed New Specialty Application for Privacy Law.

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### **BACKGROUND**

Development of new specialty areas is an important and ongoing activity of the Legal Specialization Unit, Office of Admissions at the State Bar of California. In addition to furthering the stated purposes of the program - assisting the public in identifying competent legal counsel and encouraging attorney competence - expansion of the program to include new fields of law enhances the program's utility by increasing the number and range of certified specialists available to address client needs.

The process of developing a new specialty area requires substantial effort. The following description is based on steps that have characterized this process in the past. The new specialty development process generally starts with a proposal from an interested group of attorneys to the California Board of Legal Specialization (CBLS). If the CBLS agrees that the proposed new specialty area should be explored, it may send a proposal to the State Bar Board of Trustees asking for the appointment of a consulting group of practitioners, judges, and others with expertise in the proposed specialty area as well as business experts to evaluate whether or not a specialty should be created.

If the Board of Trustees approves the creation of a consulting group, an application period will be opened, applications to serve on the consulting group will be accepted, and qualified applicants will be appointed by the Board of Trustees.

Once the consulting group is formed, it will begin by studying the practice area to judge whether there is sufficient need and interest to create a specialty, as well as whether the area is sufficiently defined as to create a useful specialty definition.

The group may develop draft standards for certification, a process that generally has taken about four meetings over nine to twelve months. The CBLS reviews the consulting group's proposed standards and sometimes refers them back to the consulting group for revision.

Once the CBLS approves the draft standards, they are presented to the Board of Trustees with the request that they be sent out for a 45-90-day public comment period. Comments received during this period are referred to the consulting group for analysis and possible redrafting of the proposed standards. When the consulting group has considered the comments, it presents the proposed standards, with an analysis of the public comments, to the CBLS. If the CBLS approves the proposed standards, they are transmitted to the Board of Trustees for approval. At any stage, the proposed standards may be referred back to the consulting group for revision and, if significant revision takes place, the proposed standards again may be sent out for public comment. Upon approval by the Board of Trustees, a CBLS Working Group for the new specialty is appointed to develop questions for the first certification examination. Upon approval of a new area of legal specialization by the Board of Trustees, the State Bar may approve for a period of no more than two years satisfactory completion of one or more alternative tasks in lieu of a written examination.

This process can be quite lengthy, particularly if there is controversy over the proposed standards or viability of the specialty area. The consulting group may also recommend that a specialty should not be created at that time.

## **DISCUSSION**

The California Lawyers Association (CLA) submits a letter and Proposed New Specialty Application, all attached as Attachment A.

Included in the attachment are:

- Letter regarding proposed California legal specialization in privacy law
- Definition of proposed specialty
- Description of other bar or professional organization practice sections
- Description of perceived need
- Description of potential value
- Description of substantive feasibility
- Description of degree of interest and support
- Description of practical viability

- Other information on the proposed specialty area

For additional background regarding Privacy Law as a specialization area at the State Bar, please note the following:

- November 2010: by recommendation of the CBLS at the time, a Privacy Law Consulting Group was appointed by the Board of Trustees. However, it was later determined there was a lack of consumer need in the area, and the additional research into the specialization was no longer continued.
- December 2019: the International Association of Privacy Professionals (IAPP) applied for accreditation of their certification program in Privacy Law, however, the CBLS denied the IAPP application for accreditation of their program.
- June 2021: the CLA submitted a proposed new specialty application.

Staff believe that the CLA establish a current consumer need in the area, and even indicate that the American Bar Association (ABA) has approved the accreditation of a privacy law specialization. With the recent enactment of the California Consumer Privacy Act (CCPA) and passage of the California Privacy Rights Act of 2020 (CPRA), staff recommend that the creation of this specialty area be explored. Should the CBLS agree with the recommendation, staff can begin work on a proposal to the Board of Trustees recommending creation and appointment of a new Privacy Law Consulting Group.

## **RECOMMENDATION**

It is recommended that the California Board of Legal Specialization approve the following motion:

**MOVE**, that a State Bar of California privacy law specialization be further explored; and

**FURTHER MOVE**, that staff begin work on a proposal to the Board of Trustees recommending the creation and appointment of a Privacy Law Consulting Group.

## **ATTACHMENT LIST**

- A. California Lawyers Association Letter and Proposed New Specialty Application in Privacy Law