



The State Bar of California

OPEN SESSION AGENDA ITEM IV.H. DECEMBER 2021

DATE: December 17, 2021

TO: Members, California Board of Legal Specialization

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

SUBJECT: Review of Request to Delegate Authority to the CBLS Chair and Vice Chair to Appoint New Specialty Area Consulting Groups

SUMMARY

At the September 2021 California Board of Legal Specialization (CBLS) meeting, staff, the CBLS acted to recommend that the Board of Trustees establish a consulting group to assess the need for a new specialization in privacy law, and that, after the solicitation for interest in participating, the Board appoint the members of the group. Staff is now recommending an approach to streamline that process. Specifically, this agenda item recommends that CBLS request that the Board of Trustees, upon authorization to establish a consulting group regarding the development of a new specialty in privacy, delegate to the CBLS Chair and Vice Chair the authority to appoint the members of the consulting group.

BACKGROUND

Exploring the development of new specialty areas is an important responsibility of the CBLS. In addition to furthering the stated purposes of the legal specialization 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 CBLS. If the CBLS agrees that the proposed new specialty area should be explored, it may send a proposal to the Board 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 a specialty should be created.

If the Board 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.

Once the consulting group is formed, it will begin by studying the practice area to assess 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 specialization.

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 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 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, 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, 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

At its September 2021 meeting, the CBLS determined that a potential new legal specialization in Privacy Law should be further researched. To streamline the process of launching the new consulting group, staff recommend that in recommending that the Board authorize a consulting group to explore the development of a privacy law specialization, CBLS also requests that the Board delegate to the CBLS Chair and Vice Chair the authority to appoint the members of the consulting group, following consultation with the Board's Appointment Liaisons.

This change in process would also parallel similar processes employed by other State Bar subentities and their respective subcommittee appointments (the Committee of Bar Examiner's

Chair has been granted authority to appoint members to the Committee of State Bar Accredited and Registered Schools).

RECOMMENDATION

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

MOVE, that in connection with the recommendation that the Board of Trustees approve the creation of a specialty area consulting group in the area of privacy law, CBLS recommends that the Board of Trustees delegates to the Chair and Vice Chair of the California Board of Legal Specialization Chair and Vice Chair authority to appoint the members of the consulting group.