



# The State Bar of California

---

## **OPEN SESSION**

### **AGENDA ITEM**

#### **III.D. DECEMBER 2023**

#### **CALIFORNIA BOARD OF LEGAL SPECIALIZATION**

**DATE:** December 8, 2023

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

**FROM:** Adrian Galang, Program Supervisor, Legal Specialization

**SUBJECT:** Discussion and Approval of the Consulting Group on the Establishment of a Legal Specialization in Privacy Law's Report and Recommendation to Continue Development of Privacy Law Legal Specialization

---

### **EXECUTIVE SUMMARY**

This agenda item presents the Consulting Group on the Establishment of a Legal Specialization in Privacy Law's Report and Recommendations for California Board of Legal Specialization review and approval to continue development of privacy law as a new specialty area.

The Report and Recommendations is set forth in Attachment A.

---

### **BACKGROUND**

California Rules of Court, rule 9.35 directs the State Bar to establish and administer a program for certifying attorneys as specialists in particular areas of law. To demonstrate the necessary proficiency to become a certified specialist, an attorney must pass a certification examination, satisfy rigorous task and experience requirements, and receive favorable evaluations by other attorneys and judges familiar with the attorney's work in the specialty area of law. Certifying legal specialists serves two important goals: (1) improving the level of practice for attorneys who participate in the certification program; and (2) assisting consumers in identifying lawyers whose skills match a consumer's specific legal needs. Formal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading.

The California Board of Legal Specialization (CBLs) administers the State Bar Legal Specialization program, which is charged with, among other things, proposing additional fields of law to be added to the program. Since its establishment in 1970, the program has grown to provide certification in 11 legal specialization fields: Admiralty & Maritime Law (2008); Appellate Law (1995); Bankruptcy Law (1993); Criminal Law (1972); Estate Planning, Trust & Probate Law (1988); Family Law (1979); Franchise & Distribution Law (2006); Immigration & Nationality Law (1986); Legal Malpractice Law (2008); Taxation Law (1972); and Workers' Compensation Law (1972).

Exploring the development of new specialty areas is an important responsibility of the CBLs. 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 consumer needs. The process of developing a new specialty area, however, requires substantial time and effort. Two applications were submitted for interest with the CBLs in Privacy Law: one in 2019 by the International Association of Privacy Professionals (IAPP) for accreditation of their own specialty certification program, and the other in 2021 by the California Lawyers Association (CLA) for a proposed new State Bar legal specialization area. Both organizations discussed the need and the interest in Privacy Law specialization.

At its September 2021 meeting, the CBLs reviewed and approved the recommendation that a State Bar Privacy Law legal specialization be further explored, and at its December 2021 meeting, the CBLs delegated authority to the CBLs Chair and Vice Chair to appoint a new specialty area consulting group. Working with staff, the CBLs officers appointed 11 members and two public members to the consulting group in 2022, and the Consulting Group on the Establishment of a Legal Specialization in Privacy Law (Privacy Law Group or PLG) was created. The PLG was charged with (1) 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; and (2) if the PLG determines that certification in this area of law is feasible and appropriate, they will draft appropriate certification standards for review by the CBLs and the State Bar Board of Trustees.

The PLG held three meetings in 2023, one on March 23, June 1, and most recently on September 28, 2023. To address the first charge, the purpose of the March and June meetings were focused on information gathering, where members were assigned specific topics to independently research related to the need and interest, and privacy law as a defined area of law to bring back to the PLG to present and discuss at its meetings. At its June meeting, the PLG concluded that there is significant interest and a compelling need for such a specialty area, and they began working on a recommendation that the area continue to be researched and developed. In September, the PLG approved the attached Report and Recommendations (Report) for transmittal to the CBLs to request approval to move the PLG to the second half of their charge: drafting certification standards to bring to the CBLs and Board of Trustees.

## **DISCUSSION**

The PLG's full report, included as Attachment A, was a collaborative effort from all members. The Report provides that Privacy Law in California has evolved rapidly over recent years and privacy is now of critical importance to the public. Technical advancements and more malicious internet usage have dramatically changed the privacy risks that individuals face today due to the continuing growth of big data, and governments wrestle with how to best protect individuals through the implementation of an overlapping patchwork of statutes and regulations. The need for attorneys with privacy expertise has never been greater and will continue to expand at a rapid rate.

Privacy law evolved gradually, starting with a limited focus. In the U.S., it traced back to the passage of the Bill of Rights amending the U.S. Constitution in 1791 with the Third, Fourth, and Fifth Amendments. These amendments establish a Federally-protected right to privacy and grant protection from government intrusion, ensuring freedom from soldier quartering (Third), safeguarding against unreasonable searches (Fourth), and justifying protection of private information (Fifth). While initially directed at government actions, modern privacy laws extend safeguards to shield individuals from private entities.

Since 2020, the Privacy Law landscape has rapidly evolved with heightened complexity. Notably, California saw significant developments, including California Privacy Protection Act (CCPA) regulations, the California Privacy Act (CPRA) enactment, and subsequent amendments. Additional legislation, like the Genetic Information Privacy Act, addressed genetic testing. The CPRA took effect in January 2023, accompanied by implementing regulations from the newly established CPPA. The privacy law sector is experiencing unprecedented change and increasing complexity.

Recognizing Privacy Law as a specialty area underscores a commitment to individual rights, enhances legal excellence and ethical standards, raising the bar for privacy-related matters. A proposed Privacy Law specialty area in California aims to cover a comprehensive curriculum, including foundational knowledge of privacy laws, data protection compliance, data breach response, privacy practice experience, and emerging technologies. The addition of a specialty in privacy law represents a forward-thinking step, and acknowledges the field's significance and positions California as a leader in ensuring legal excellence in privacy matters.

The Report concludes that there is a large and growing need for a privacy law specialization in California, a dedicated community of attorneys interested in and devoted to privacy law specialization, an area of law being refined by state and national communities and interest groups, and support for the growth of privacy law as a field for the long term within the legal community and education system.

## **RECOMMENDATION**

It is recommended that the California Board of Legal Specialization approve the Report and Recommendations of the Consulting Group on the Establishment of a Legal Specialization in

Privacy Law provided in Attachment A, and direct the PLG to explore and draft the requirements needed to establish the specialty area in privacy law.

## **PROPOSED MOTIONS**

**Should the California Board of Legal Specialization agree with this recommendation, the following motion would be appropriate:**

**MOVE**, that the California Board of Legal Specialization approve the Report and Recommendations of the Consulting Group on the Establishment of a Legal Specialization in Privacy Law set forth in Attachment A, and direct the PLG to develop the requirements needed for applicants to receive legal specialization certification in privacy law: (1) exam specifications, (2) standards for certification and recertification, and (3) Legal Specialist Continuing Legal Education topics.

## **ATTACHMENT LIST**

- A.** Report and Recommendations of the Consulting Group on the Establishment of a Legal Specialization in Privacy Law