
TWENTIETH ANNUAL REPORT OF THE CALIFORNIA BOARD OF LEGAL SPECIALIZATION

This report covers the period from 1/1/06 through 12/31/06

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Points of view or opinions expressed in this document are those of the author(s). They have not been adopted or endorsed by the State Bar's Board of Governors and do not constitute the official position or policy of the State Bar of California.

BACKGROUND

THE PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

The Legal Specialization program is a Supreme Court approved method of certifying attorneys as specialists in particular areas of law, and operates pursuant to the following regulatory structure:

- Rule 9.35, adopted by the Supreme Court, which contains a provision authorizing the State Bar to adopt rules to establish and administer a program to certify legal specialists;
- Rules Governing the State Bar of California Program for Certifying Legal Specialists ("Rules"), adopted by the Board of Governors, which contain the details for operation of the program; and
- Standards for Certification and Recertification in each specialty area, adopted by the Board of Governors.

The requirements to become a certified specialist are as follows:

- passage of a written examination in the specialty area
- participation in continuing education activities in the specialty area
- demonstration of experience in the specialty area based on performance of a variety of activities related to that area
- favorable evaluation by other attorneys and judges familiar with the attorney's work in the specialty area

Certification is valid for a five-year period, during which time specialists must continue to meet task and education requirements similar to those for certification in order to qualify for recertification.

Costs of the program are entirely defrayed by annual fees, as well as certification, recertification, education provider, and accreditation fees. The Rules mandate that specialization be self-supporting.

HISTORY

The program was established to:

- give consumers another tool to use in selecting an attorney. Formal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading to the public. The program authorizes attorneys who satisfy specific criteria to hold themselves out as "certified specialists." The public may rely on the fact that certified specialists have had to demonstrate their proficiency in their practice area.
- "level the playing field" by allowing attorneys who are not in large firms to demonstrate their proficiency to the public. The program gives sole practitioners, attorneys in small firms, attorneys in small towns, women and minorities a way of gaining recognition for their knowledge, work and skills, and advertising their proficiency in a particular area of law to the public.

- encourage attorney competence through the development of continuing legal education (CLE) programs. Specialists have been 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 specialists is almost double that of the general bar.

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 Governors adopted a "Pilot Program" to develop through experience the most feasible and useful certification program.
- 1972 The "Pilot Program," which certified specialists in Criminal Law, Taxation Law, and Workers' Compensation Law, was approved by the California Supreme Court.
- 1973 The first examinations in Criminal Law, Taxation Law and Workers' Compensation Law were offered.
- 1979 Family Law was added to the Pilot Program.
- 1984 The Board of Governors 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 Governors requested the California Supreme Court to 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. **The Court renumbered the rule as 9.35 effective January 1, 2007.*
- The Board 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. 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 another entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors (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 creditors' 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 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 Governors. 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 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.

NUMBER OF CERTIFIED SPECIALISTS

As of December 31, 2006, the following were the number of certified specialists:

| Specialty Field | |
|--------------------------------------|-------------|
| Appellate Law | 242 |
| Bankruptcy Law | 101 |
| Criminal Law | 351 |
| Estate Planning, Trust & Probate Law | 798 |
| Family Law | 1078 |
| Immigration & Nationality Law | 141 |
| Taxation Law | 402 |
| Workers' Compensation Law | 946 |
| TOTAL | 4059 |

THE VOLUNTEER EFFORT

From the development of the initial proposal to create a new specialty area to the administration of existing specialty areas, the program is led by volunteers assisted by the Office of Special Admissions and Specialization. During 2006, nine separate committees made up of volunteers administered the program: the CBLS and the Advisory Commissions for each of eight specialty areas (a ninth Advisory Commission was appointed in November when a new specialty certification program in Franchise and Distribution Law was created).

The CBLS and each of the Advisory Commissions meet at least six times a year in Northern and Southern California locales. Members are appointed to three-year terms. In addition, consulting groups are appointed on an ad hoc basis to develop and make recommendations as to certification standards for new specialty areas.

CBLS

The CBLS, which is appointed by the Board of Governors, is charged with overall administration of the program, recommends new specialty areas and modifications to existing specialty areas to the Board of Governors, and acts upon the recommendations of the Advisory Commissions for approval or denial of certifications and recertifications. It is composed of 11 members, at least three of whom must be public members, and one advisor (traditionally the previous year's chair). In addition, the Advisory Commission chairs sit on the CBLS as voting members.

For the 2006-2007 committee year beginning October 9, 2006, Myron S. Greenberg, Larkspur, is serving as Chair, Alice W. O'Sullivan, San Francisco, as Vice-Chair, and J. Scott Bovitz, Los Angeles, as Advisor.

Advisory Commissions

The Advisory Commissions, also appointed by the Board of Governors, devise the specialty examinations, review certification and recertification applications, and act on applications for

approved education provider status or approval of individual education activities. Each of the Advisory Commissions is composed of nine members, at least one of whom is a public member.

Council of Past Chairs

In November 1996, the Board of Governors created and appointed a Council of Past Chairs of the Board of Legal Specialization to advise and consult with the CBLs on an ad hoc basis. The Council consists of the last five chairs of the CBLs who are willing and able to serve.

Real Estate Law Consulting Group

In September 1996, the Board of Governors appointed a Real Estate Law Consulting Group at the request of the CBLs. The area of real estate law was chosen as a potential area for certification because of the myriad of issues centered around real estate (e.g., landlord/tenant lease documentation, land use, bankruptcy, negotiation and eviction procedures, partnerships and entity formation, brokerage disputes, affordable housing, etc.) and the perceived increasing need for consumers to be able to identify attorneys who have demonstrated proficiency in that field.

The Consulting Group met several times until the State Bar's funding crisis intervened, which left remaining staff able to focus only on application processing and other essential administrative duties and prevented the Consulting Group from presenting its final report and recommendations to the CBLs. At the end of 2003, staff contacted members of the Consulting Group to determine if there was still interest in pursuing the specialty and discovered that several members were still available and willing to continue the task. Working with members of the State Bar's Real Property Law Section Executive Committee, the Consulting Group completed draft standards for certification and recertification for a specialty encompassing the entire breadth of the field. The standards were circulated for a 90-day public comment period in May 2005.

After considering the extensive public comment received, as well as suggestions from the State Bar and local bar real property law sections, the CBLs referred the proposed standards back to the Real Estate Consulting Group, which concluded that narrowing the specialty to consumer real estate would best serve both the public and members of the bar. The Consulting Group's revised standards will be recirculated for public comment if the CBLs wish to proceed with the new specialty.

Franchise Law Consulting Group

In May 2005, the CBLs was approached by the State Bar Business Law Section's Franchise Law Committee asking that the CBLs consider the creation of a new specialty in franchise law. According to information provided by the Franchise Law Committee, California was the first state to adopt a law regulating the sale of franchises. Because of the complexity of the franchise relationship and the rules governing franchise sales, there is a need for experienced counsel to provide a variety of legal services both to the franchisors and to franchisees seeking legal counsel and assistance.

The experience of the members of the Franchise Law Committee has been that both franchisors and franchisees benefit from experienced counsel in preparing and reviewing franchise documents. In particular, franchisees may be small business owners without a high level of sophistication or ability to find competent legal franchise counsel. The creation of a franchise law specialty would assist the public by making franchise law specialists easier to locate. The Department of Corporations has also noted that experienced counsel help smooth the process of filing documents as filings prepared by inexperienced counsel can raise significant compliance issues which may require repair or lead to litigation.

The percentage of California lawyers with substantial franchising experience is small but growing. However, the franchising industry is growing very rapidly. As a consequence, the demand for legal counsel has grown as well. The creation of a Franchise Law speciality would provide franchisees and franchisors with more ability to find experienced legal counsel.

At its October 2005 meeting, the Board of Governors appointed members to a Franchise Law Consulting Group to develop standards for certification in that area. At its first meeting, the group expanded the definition of the specialty to include distribution law. Standards for Certification and Recertification in Franchise and Distribution Law were circulated for public comment in 2006. In November 2006, the Board of Governors approved the creation of a certification program in the specialty area and appointed a Franchise and Distribution Law Advisory Commission. The first exam in the new specialty will take place in August 2007.

Admiralty and Maritime Law Consulting Group

In 2005, the CBLs was approached by a practitioner in admiralty and maritime law and asked to consider a certification program in that field. Information provided by her and other practitioners indicates that admiralty and maritime is a highly specialized field. For example, the Federal Rules of Civil Procedure have supplemental "lettered" rules that apply only to admiralty and maritime cases. Those rules also have a section that provides for a special "tender" procedure whereby a party can be "tendered," i.e. brought into a lawsuit, as a direct defendant and must answer the plaintiff's complaint. This procedure is only available in admiralty and maritime cases.

Practitioners also pointed to the example of a major cruise line that has selected Los Angeles as the exclusive forum within which it may be sued, resulting in tens of thousands of passengers traveling on that line that have to come to California courts in the event of an injury. Such claims are governed by maritime law and practitioners in this area believe that certification would provide a way for consumers to locate competent counsel.

In August 2006, the Board of Governors appointed an Admiralty and Maritime Law Consulting Group to develop standards for certification in that area. The group expects to have proposed standards ready to be circulated for public comment in late spring 2007.

(See Appendix A for CBLs, Advisory Commission, Council of Past Chairs, and Consulting Group rosters.)

THE STAFF

The Legal Specialization program, formerly handled by the Office of Certification, is now handled by the recently created Office of Special Admissions and Specialization. The day-to-day operations of the program include processing applications for certification, recertification and approved provider/individual education activity approval; answering inquiries about the program from the public and members of the bar; staffing the CBLs, Advisory Commissions and consulting groups; maintaining the Legal Specialization website; developing and monitoring the budget; assisting in the development and administration of the legal specialist exams; maintaining and distributing lists of certified specialists and approved education providers and programs; and attending professional and educational conferences in order to promote the program.

BUDGET/FISCAL MATTERS

Section 20.8 of the Rules mandates that the program be self-supporting. It is completely funded by fees collected from applicants, certified specialists, education providers, and accredited organizations. The program draws no monies from the State Bar's general fund and, in fact, pays into the general fund for infrastructure costs such as space, equipment, and computer services. The program is budgeted on a fiscal year basis.

The office of the CBLS is located at The State Bar of California, 180 Howard Street, San Francisco, CA 94105.

ACTIVITIES OF THE PROGRAM

CONTINUING LEGAL EDUCATION

One of the most important functions of each of the Advisory Commissions is to supervise the quality of proposed continuing legal education programs that may be attended by those individuals seeking education units needed 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 application. Applicants for recertification are required to complete 60 hours of education during their current certification term.

The Advisory Commissions are authorized to approve providers of education programs for a period of up to three years. To qualify as an approved provider, the provider must demonstrate that, in the two years immediately preceding application, it put on at least four education programs that complied with the requirements for education program content. Like MCLE, approved Legal Specialization provider status allows providers to offer an unlimited number of programs for legal specialization credit without having to submit each one for approval.

The following statistics reflect the number of approved legal specialization providers as of December 31, 2006, and the number of applications for approval of individual CLE programs received during the period of January 1, 2006, through December 31, 2006:

| Advisory Commission | # of Approved Providers | # of Applications for Individual Programs |
|--------------------------------------|-------------------------|---|
| Appellate Law | 15 | 11 |
| Bankruptcy Law | 1 | 1 |
| Criminal Law | 8 | 0 |
| Estate Planning, Trust & Probate Law | 15 | 26 |
| Family Law | 18 | 22 |
| Immigration & Nationality Law | 2 | 3 |
| Taxation Law | 15 | 13 |
| Workers' Compensation Law | 18 | 15 |
| TOTAL | 92 | 91 |

EXAMINATIONS

Examinations take place in alternate odd-numbered years. The next exam in all specialty areas is scheduled for August 12, 2007, in San Jose and Los Angeles.

ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS ("CERTIFYING CERTIFIERS")

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 designate specialists pursuant to standards adopted by the Board of Governors. The following certification programs have been accredited by the State Bar 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 9 8 |
| American Board of Professional Liability Attorneys | accounting malpractice legal malpractice medical malpractice | 0 4 11 |
| National Association of Counsel for Children | juvenile law (child welfare) | 52 |
| National Board of Trial Advocacy | civil trial advocacy criminal trial advocacy family law trial advocacy | 107 6 3 |
| National Elder Law Foundation | elder law | 31 |
| | TOTAL | 266 |

An application is pending for accreditation of the National Board of Trial Advocacy's certification program in social security disability advocacy.

INTERNET

The CBLS maintains a website at www.californiaspecialist.org where visitors can search for a certified specialist by area of law and county. Attorneys interested in becoming certified can use the site to find information on the process, including the latest exam information, the program's rules and regulations, and the standards for certification. Also found on the site are a list of approved legal specialist education providers, the *Legal Specialization Digest*, an order form for consumer brochures, applications for recertification, and the CBLS logo for use in advertising. Exam applicants are able to register online and pay with a credit card.

Added to the site in 2006:

- an option to allow people to order and pay for consumer brochures online
- the education activity approval application for CLE providers who want to have a CLE activity approved for legal specialist credit

PUBLIC AWARENESS

The program continued its established public awareness activities:

- ◆ Photo ads in the *California Bar Journal*
- ◆ Continued funding of Chuck Finney's National Public Radio program, *Your Legal Rights*, a weekly call-in format that features certified specialist as guests at least once a month and Call A Lawyer Night featuring certified specialists
- ◆ Annual publication of the list of certified specialists in the *Parker Directory*
- ◆ Biannual publication of the *Legal Specialization Digest*
- ◆ Publication of consumer pamphlets
- ◆ Maintenance of the program website at www.californiaspecialist.org
- ◆ Annual reception recognizing specialists who have been certified for 20 and 30 years and those on judicial service
- ◆ Information booths at the State Bar Annual Meeting, Section Education Institute, and other professional and educational conferences
- ◆ Distribution of program Information at district and county bar meetings

CBLS LOGO



Registration of the CBLS logo as a certification mark with the U.S. Patent and Trademark Office was completed in 2004. 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 specialist certification among attorneys and the consumers of legal services.

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 twenty and thirty years and for those on judicial service. Attorneys certified in the areas of criminal law, family law, taxation law and workers' compensation law, and those serving as bench officers, were honored at a reception on October 6, 2006, during the State Bar's Annual Meeting in Monterey. The reception was presided over by then CBLS chair, J. Scott Bovitz, who presented certificates of appreciation to the attorneys and judges who were able to attend in person. Those unable to attend received their certificates by mail.

Those honored in 2006 were four certified specialists who became bench officers and 26 who

reached the 30-year mark, including six certified criminal law specialists, 12 certified taxation law specialists, and eight certified workers' compensation law specialists. The thirty 20-year honorees included nine certified criminal law specialists, 11 certified family law specialists, three certified taxation law specialists, and seven certified workers' compensation law specialists. Representatives from the Texas Legal Specialization program were featured speakers as the CBLs continues to work cooperatively with the ABA Standing Committee on Specialization and other states on issues of specialization.

IDENTIFICATION OF PROBLEM AREAS AND RECOMMENDATIONS

Section 21.0 of the Rules requires that the CBLS annual report identify problem areas and recommend appropriate solutions. During this reporting period of January 1, 2006 to December 31, 2006, the CBLS has identified the following continuing areas of concern.

PROGRAM GROWTH AND CONTINUING EDUCATION

The CBLS, working with State Bar Sections, is in the process of developing a plan to address the need to provide direction for, and increase the development of, the skills and knowledge of attorneys in specific practice areas. Currently there is no systematic method for newly admitted attorneys or attorneys who wish to change practice areas to make a choice of practice enhancing education programs or to identify the education, experience and skills needed to become certified should that be a career objective. The plan would develop a comprehensive Continuum of Professional Development (Continuum) program that would recognize the Bar's long-term commitment to competence, identify education objectives, and help attorneys to develop relevant skills.

The Continuum will identify a clearly outlined program of education and establish a curricula with increasing levels of knowledge, identify an educational track to ensure consistency, breadth and quality in a particular practice area, and provide attorneys with the tools to assist them in identifying areas of improvement and goals for the future to enhance competence. The next stage, speciality certification, would continue to be a voluntary step undertaken by attorneys who choose to be identified as specialists in a particular area of law. Having a comprehensive program in place would provide a clear pathway to speciality certification and also a way to increase participation in the certification program.

With the creation of such an education program, new legal education programs designed for the beginning, intermediate and most sophisticated practitioners will also be created. These courses will be open to all members of the bar and allow all members of the bar, whether general practitioners or specialists, to have access to more detailed information in the practice area. The result is a bar that continues to improve itself as all attorneys gain or improve their knowledge in an area of law.

INCREASING PUBLIC AWARENESS

The CBLS is continuing to explore ways to reach practitioners, consumers, and education providers to make them aware of the program and its benefits. The focus in 2007 will be to build upon outreach efforts already in place. For example, staff attends a number of professional and education conferences during the year. We will expand on those efforts by collecting business cards from interested attorneys and establishing a database that will allow us to follow up with notices about upcoming exams, news about new speciality areas, etc. We are also looking at increasing the circulation of the *Digest*, increasing awareness of and participation in the "Your Legal Rights" national public radio program, and increasing awareness and usage of the program's website.

STREAMLINING THE ADMINISTRATIVE PROCESS

The CBLs and staff continue to look at ways to make the exam and application process more efficient. We expect that most, if not all, attorneys registering for the 2007 Legal Specialist Exam will do so online and staff continues to explore the use of that technology to allow specialists to submit their recertification applications online as well. Staff also continues to investigate a scannable peer review form, which would speed up that part of the process while giving the Advisory Commissions additional information in considering applicants for certification and recertification.

Appendix A
Roster of Volunteers
(not included)