



# **22nd Annual Report**

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**California Board of  
Legal Specialization**

**State Bar of California  
2009**

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# TWENTY-SECOND ANNUAL REPORT OF THE CALIFORNIA BOARD OF LEGAL SPECIALIZATION

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This report covers the period from 1/1/08 through 12/31/08

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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

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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

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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 areas.
- "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

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- 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 that the California Supreme Court 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 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 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.

2007 The National Board of Trial Advocacy/National Board of Legal Specialty Certification's

program in social security disability advocacy was accredited by the State Bar.

2008 Admiralty and Maritime Law and Legal Malpractice Law were added to the program.

## **NUMBER OF CERTIFIED SPECIALISTS**

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As of December 31, 2008, the following were the number of certified specialists:

<b>Specialty Field</b>	
Admiralty & Maritime Law*	0
Appellate Law	257
Bankruptcy Law	107
Criminal Law	357
Estate Planning, Trust & Probate Law	817
Family Law	1133
Franchise & Distribution Law	7
Immigration & Nationality Law	147
Legal Malpractice Law*	0
Taxation Law	375
Workers' Compensation Law	935
<b>TOTAL</b>	<b>4135</b>

\*The first exam in this area will be given in August 2009.

## **DUAL SPECIALISTS**

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87 certified specialists hold dual certification. The most common is taxation/estate planning, trust and probate (68), followed by criminal/appellate (7), family/estate planning, trust and probate (3), and family/appellate (3). Others have the distinction of being the only dual specialist in their areas: taxation/immigration and nationality, family/bankruptcy, family/workers' compensation, family/criminal, bankruptcy/estate planning, trust and probate, and bankruptcy/taxation.

## **JUDICIAL SERVICE**

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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 waives the five-year recertification requirement and exempts

them from the annual legal specialist fee as long as they remain on judicial service. The program is honored to have 174 certified specialists who are currently on judicial service, 103 of whom are judges of courts of record. Among them are 17 certified specialists in family law, 60 in criminal law, 20 in workers' compensation law, 7 in taxation law, and 3 each in estate planning, trust and probate law, immigration and nationality law, and appellate law.

## **THE VOLUNTEER EFFORT**

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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 2008, twelve separate committees made up of volunteers administered the program: the CBLS and the Advisory Commissions for each of eleven specialty areas.

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 on certification standards for new specialty areas.

### **CBLS**

The CBLS, which is appointed by the Board of Governors, performs 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 certification and recertification. 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 2008-2009 committee year beginning October 1, 2008, Lester J. Friedman, Beverly Hills, is serving as Chair, Stafford Matthews, San Francisco, as Vice-Chair, and Alice O'Sullivan, San Francisco, 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 Multiple Activity 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 past chairs of the CBLS who are willing and able to serve.

### **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 the need for tens of thousands of passengers traveling on that line to 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 proposed standards were circulated for public comment in 2007. After reviewing the comment received, the Consulting Group made additional changes to the standards, which were distributed for another public comment period in the spring of 2008. Following a review of the additional public comment received, CBLS recommended creating a new specialty, and the Board of Governors, at its November 2008 meeting, adopted Admiralty and Maritime Law as a new specialty area.

### **Legal Malpractice Law Consulting Group**

At the request of the CBLS, the Board of Governors created a Consulting Group at its July 2008 meeting to examine the feasibility of, and develop standards for, certifying legal specialists in the area of legal malpractice law.

Based on a request from practitioners in the area of legal malpractice law, CBLS recommended to the Board of Governors in July 2008 the creation of a consulting group to develop standards for a new specialty in that field. The practitioner, in his request, stated that the State Bar has accredited the American Board of Professional Liability Attorneys’ certification program in legal malpractice and noted that he is certified by that entity. However, he believes that it is important for the State Bar to establish its own certification program, stating:

California’s Rules of Professional Conduct, while similar in many respects to the American Bar Association’s Rules of Professional Responsibility, are distinguishable in many significant and sometimes subtle respects. While our California rules state they are not intended to create civil causes of action, in legal malpractice cases experts routinely rely on these rules in opining on the standards of practice for attorneys. In addition, in its Business and Professions Code, Civil Code, and Code of Civil Procedure California has numerous statutes related to these rules and to the practice of law in this state. It is important for any attorney representing a claimant or a lawyer in a legal malpractice case to be extremely conversant with California’s own rules and statutes.

The practitioner’s letter goes on to say that certification in the area of legal malpractice would enhance attorney competence and provide a higher degree of consumer protection, noting that “[w]ithin the last 15 years there has been an explosion in legal malpractice cases, and the general public, as well as the Bar, would be greatly served through the engagement of lawyers certified as specialists in California legal malpractice claims.” He also notes that several judges who have presided over legal malpractice suits have discussed the idea of a legal malpractice specialty with him and other recognized practitioners in the field and “are unanimous in endorsing this specialization.”

The Consulting Group was comprised of the top practitioners in the state in the field of legal malpractice. Each of the members of the Consulting Group has many years of experience in defending and bringing legal malpractice cases. In a short period of time, they developed standards

for certification and recertification. The proposed standards were circulated for public comment after the Board's September 2008 meeting, and the public comment period ended in November 2008. At its meeting in November 2008, the Board of Governors adopted the new specialty area.

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

## **THE STAFF**

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The Legal Specialization program is handled by the Office of Special Admissions and Specialization. The day-to-day operations of the program include processing applications for certification, recertification and Multiple Activity 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, Multiple Activity Providers and individual programs; and attending professional and educational conferences in order to promote the program.

In December 2008, long term staff member Lorna Maynard unexpectedly died. For the past 18 years she was the Program Administrator. Among her duties were the administration of the specialization exam, revisions to the program rules and standards, and development of the Legal Specialization website, of which she became the webmaster. She staffed the CBLS, providing exceptional administrative support.

## **BUDGET/FISCAL MATTERS**

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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

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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 individuals who need 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 five-year certification term.

The Advisory Commissions are authorized to approve providers of education programs for a period of up to three years. To qualify as a Multiple Activity 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, Multiple Activity 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, 2008, and the number of applications for approval of individual CLE programs received during the period of January 1, 2008, through December 31, 2008:

Advisory Commission	# of Approved Providers	# of Applications for Individual Programs
Appellate Law	15	7
Bankruptcy Law	1	5
Criminal Law	8	4
Estate Planning, Trust & Probate Law	17	17
Family Law	19	23
Immigration & Nationality Law	2	1
Taxation Law	14	8
Workers' Compensation Law	18	14
<b>TOTAL</b>	<b>94</b>	<b>79</b>

### EXAMINATIONS

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Examinations take place in alternate odd-numbered years. The next exams in all specialty areas will be given on August 9, 2009, in San Francisco and Los Angeles.

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## ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS)

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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	39
	consumer bankruptcy law	11
	creditors' rights law	9
American Board of Professional Liability Attorneys	legal malpractice	4
	medical malpractice	15
National Association of Counsel for Children	juvenile law (child welfare)	66
National Board of Trial Advocacy	civil trial advocacy	108
	criminal trial advocacy	8
	family law trial advocacy	3
	social security disability advocacy	4
National Elder Law Foundation	elder law	28
	<b>TOTAL</b>	295

## INTERNET

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The CBLS maintains a website at [www.californiaspecialist.org](http://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. They can also search for a list of Multiple Activity Providers, order consumer brochures, and download the *Legal Specialization Digest*, applications for recertification, and the CBLS logo for use in advertising. Exam applicants are able to register online and pay with a credit card. Education providers can download the individual activity approval application to get an activity approved for legal specialist credit.

## PUBLIC AWARENESS

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The program continued its established public awareness activities:

- photo ads in the *California Bar Journal*
- continued funding of Chuck Finney's public radio program, *Your Legal Rights*, on KALW 91.7, San Francisco, a weekly call-in format that features certified specialists

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](http://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
- ads in the *Daily Journal's Directory of California Attorneys, Super Lawyers*, and other publications

## CBLS LOGO

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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 membership in order to promote recognition of specialist certification among attorneys and the consumers of legal services.

## RECOGNITION PROGRAMS

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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 20 and 30 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 September 26, 2008, during the State Bar's Annual Meeting in Monterey. The reception was presided over by then CBLS chair, Alice O'Sullivan, 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 2008 were seven certified specialists who became bench officers and 10 certified workers' compensation law specialists who reached the 30-year mark. The 62 twenty-year honorees included 5 certified criminal law specialists, 19 certified family law specialists, 12 certified immigration and nationality law specialists, 20 certified taxation law specialists, and 6 certified workers' compensation law specialists.

## 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, 2008 to December 31, 2008, the CBLS has identified the following continuing areas of concern.

### PROGRAM GROWTH AND CONTINUING EDUCATION

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The CBLS is continuing its work with State Bar Sections to develop 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 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, specialty 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 specialty 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 them, 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.

The first stage of this process, the development of learning objectives, is under way. The CBLS expects to bring in a consultant to work with the Advisory Commissions to develop learning objectives that the Sections and other education providers can use in creating programs at various skill levels that attorneys can use as a pathway to develop and increase their knowledge in a particular practice area.

### INCREASING PUBLIC AWARENESS

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The CBLS is continuing to explore ways to reach practitioners, consumers, and education providers to increase awareness of the program and its benefits. The focus in 2009 will be twofold:

- *Build upon outreach efforts to attorneys that are already in place.* Staff attends a number of professional and education conferences during the year. We are collecting business cards from interested attorneys who attend these events and establishing a database that will allow us to follow up with notices about upcoming exams, news about new specialty areas,

etc. We will also be establishing an 800 number for callers to use during the Call A Certified Specialist segment of the *Your Legal Rights* public radio program that will allow certified specialists from all over the state to participate, which we anticipate will result in expanding the program outside of its current markets.

- *Use estate planning, trust and probate as a test area to increase awareness and understanding of the certification program among consumers.* The objective is to use a mix of marketing tactics, for example, distributing articles on both general and specific estate planning issues to relevant publications, sending news releases on changes in estate planning laws and locating a certified specialist, advertising in local publications and organizations' newsletters, creating public service announcements, and forming partnerships with other organizations with similar goals to share resources and costs.

## **STREAMLINING THE ADMINISTRATIVE PROCESS**

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The CBLs and staff continue to look at ways to make the exam and application process more efficient. Whenever possible, communication has been made electronically; open agenda items are sent via e-mail, and orientation materials, reminders, and the Legal Specialization Digest are also distributed electronically. The 2009 Legal Specialist Exam registration will be online, and staff continues to explore the use of that technology to allow specialists and education providers to submit applications online as well.

Appendix A  
Roster of Volunteers  
(not included)