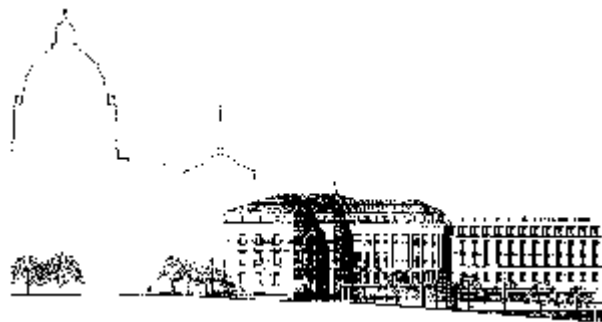


State of Minnesota

**Board
of
Legal Certification**



**ANNUAL REPORT
CALENDAR YEAR 2012**

MINNESOTA BOARD OF LEGAL CERTIFICATION ANNUAL REPORT: 2012

The Minnesota Board of Legal Certification (“Board”) has been accrediting the agencies that certify Minnesota lawyers as specialists in defined fields of law since 1986. The Board’s purpose in accrediting agencies is to enhance public access to appropriate legal services by giving the public an additional way to assess the knowledge and expertise of a prospective attorney. The Board’s work in accrediting certifying agencies benefits the profession, individual members of the bar, and the public as a whole.

The Board’s primary duties are to:

- identify, define, and approve definitions for fields of law;
- review new applications from legal organizations seeking to be accredited to certify lawyers as specialists in Minnesota in a field of law;
- monitor the accredited agencies and review agencies’ applications for recertification; and
- monitor the public statements of certified lawyers to determine whether these statements are consistent with the provisions of the Rules of Professional Conduct which address advertising oneself as a certified specialist.

The process of accrediting an agency begins when a prospective accrediting agency prepares a lengthy application proposing a definition of a specialty field of law and defining the standards by which practitioners in that field could become qualified as specialists. An applicant agency must have at least three legal practitioners among its permanent staff, operating officers, or Board of Directors who have the expertise to evaluate the qualifications of prospective specialist lawyers. The agency also must demonstrate that the certification program is available to lawyers without discrimination.

The Board carefully reviews the application, sometimes suggesting modifications of the proposed definition of the field of law or modifications to the standards. Once the Board approves both the definition and the standards by which the agency will hold its certified lawyers, the agency is accredited to certify lawyers as specialists in Minnesota. The Board also has the authority under the Rules to grant conditional approval or to deny an application. The Board would not deny an application until it has worked closely with the agency to assist the agency in complying with the Board’s Rules.

In order to be accredited to certify specialists in Minnesota, a certifying agency must verify that it will require its applicant lawyers to meet the following standards:

- be licensed to practice law and on active status in Minnesota;
- have “substantial involvement” in the field of law during the three-year period immediately preceding certification;
- obtain at least three verified peer recommendations in addition to references from lawyers and judges unrelated to and not in legal practice with the lawyer;
- successfully complete an examination of the lawyer’s knowledge of the substantive, procedural and related ethical law in the field of law; and
- provide evidence of completion of approved continuing legal education (CLE) activity in the certified specialist’s field of law as well as compliance with the CLE credit requirements of every state of active licensure.

As of December 31, 2012, lawyers in Minnesota may be certified as specialists in the following nine fields of law:

- Business Bankruptcy
- Civil Trial Practice
- Criminal Law
- Consumer Bankruptcy
- Creditors’ Rights
- Elder Law
- Family Law Trial Advocacy
- Labor and Employment Law
- Real Property

The four organizations accredited by the Board to certify specialists in those nine fields of law are the following:

- Minnesota State Bar Association (MSBA)
- American Board of Certification (ABC)
- National Board of Legal Specialty Certification (NBLSC) (the parent organization of the National Board of Trial Advocacy (NBTA))
- National Elder Law Foundation (NELF)

An agency seeking to certify lawyers as specialists in one or more specialty fields of law must apply for accreditation in each of the specialty fields.

As of December 31, 2012, the four organizations listed above report a total of 961 Minnesota lawyers who are certified specialists, compared to 926 as of December 31, 2011. The increase in numbers is the result of additional lawyers seeking accreditation by the Minnesota State Bar Association in Criminal Law and Labor and Employment Law.

I. CERTIFYING ORGANIZATIONS

A. Minnesota State Bar Association

The Minnesota State Bar Association (MSBA) is the largest accrediting body in Minnesota. The MSBA, through several of its sections, certifies lawyers as specialists in the areas of Civil Trial Practice, Criminal Law, Labor & Employment Law, and Real Property Law.

Over 84% of the Minnesota attorneys certified as specialists are certified by the MSBA. As of December 31, 2012, the MSBA had a total of 808 certified specialists, a significant increase over 2011. The number of lawyers newly certified in the specialty fields of Criminal Law and Labor & Employment Law account for this increase (see **Table 2**).

The MSBA administered the Civil Trial exam on April 21, 2012 and October 13, 2012. Three lawyers were newly certified as Civil Trial Practice specialists by the MSBA in 2012. Pursuant to a cooperative agreement with NBLSC, the MSBA uses the same test instrument and lawyers may test simultaneously to become eligible for certification by either or both agencies. As of December 31, 2012, there were 297 MSBA-certified Civil Trial Practice specialists, 11 fewer than in 2011. The MSBA reported that specialists have been struggling to meet the substantial experience requirements because civil trial matters are frequently settled rather than going to trial. Lawyers are finding it difficult to gain courtroom experience and are unable to meet the substantial involvement requirements. The MSBA submitted to the Board proposed changes to its Certification Standards in 2012 that would create a "Senior Specialist" and a "Judicial Fellow" status. The Board has expressed concerns about the new designations, and will be working with the MSBA on this issue in 2013.

The MSBA's Real Property Section has the largest number of certified lawyers. The Real Property Section administered its examination on February 25, 2012. As of December 31, 2012, there were 364 specialists certified by the MSBA as Real Property specialists, an increase of 12 from the previous year.

Twenty lawyers were newly certified as Criminal Law specialists by the MSBA in 2012, bringing the total number of lawyers certified as Criminal Law specialists to 46, an increase of 70%. One lawyer did not renew certification.

The Labor and Employment Law Section is the newest of the MSBA sections accredited to certify lawyers. The Section certified 25 new Labor and Employment Law specialists in 2012, significantly increasing the number of certified lawyers from 76 to 101.

B. American Board of Certification

The American Board of Certification (ABC), of Cedar Rapids, Iowa, is accredited to certify Minnesota lawyers in three areas: Consumer Bankruptcy, Business Bankruptcy and Creditors' Rights. ABC is "dedicated to serving the public and improving the quality of the bankruptcy and creditors' rights law bars." ABC has certified nearly 1,000 lawyers nationwide and is sponsored by the American Bankruptcy Institute and the Commercial Law League of America. ABC's goal is to provide information to consumers on bankruptcy law services and assist consumers with finding qualified lawyers in their area. ABC also produces a Directory of Board Certified Attorneys.

As of December 31, 2012, there were 14 Minnesota lawyers certified as specialists by ABC, the same number as 2011 (see **Table 2**). No Minnesota lawyers applied for certification or took ABC's certification examination in 2012.

C. National Board of Legal Specialty Certification

The National Board of Trial Advocacy, now a division of the National Board of Legal Specialty Certification (NBLSC), was founded in 1977 and has been certifying lawyers as specialists in Minnesota since 1987. NBLSC certifies lawyers as specialists in the areas of Civil Trial Practice, Criminal Law, and Family Law Trial Advocacy. As of December 31, 2012, NBLSC listed 120 lawyers as certified Civil Trial specialists, 11 Criminal Law specialists, and 3 Family Law Trial Advocacy specialists. These numbers represent a slight decrease from previous years (see **Table 2**).

NBLSC applied for accreditation for certification in the specialty field of Civil Pretrial Practice in 2012. The application is pending and a determination is expected in 2013.

D. National Elder Law Foundation

The National Elder Law Foundation (NELF) of Tucson, Arizona, was accredited in 1997 to certify specialists in Minnesota in the field of Elder Law. Elder Law specialists have expertise and experience in areas such as probate law and public benefits law, as well as being familiar with the social services aspect of working with elderly clients. As of December 31, 2012, five Minnesota lawyers are certified as Elder Law specialists, the same number as in 2011.

II. STATISTICAL PROFILE

Table 1 shows the number of certified specialists associated with each of the certifying agencies.

Table 1: Certified Specialists by Certifying Agency and Specialty Type

Certifying Agency	Specialty	Total Number of Certified Lawyers as of 12/31/11	Lawyers Newly Certified in 2012	Lawyers who did not renew in 2012	Total Number of Certified Lawyers as of 12/31/12
ABC	Consumer Bankruptcy	5	0	0	5
ABC	Business Bankruptcy	7	0	0	7
ABC	Creditors' Rights	2	0	0	2
MSBA	Civil Trial Practice	308	3	14	297
MSBA	Criminal Law	27	20	1	46
MSBA	Labor & Employment Law	76	25	0	101
MSBA	Real Property	355 ¹	22	13	364
NBLSC	Civil Trial Practice	126	0	6	120
NBLSC	Criminal Law	12	0	1	11
NBLSC	Family Law Trial Advocacy	3	0	1	3 ²
NELF	Elder Law	5	0	0	5
TOTAL	All Specialty Areas	926	70	36	961

¹ There was one attorney who was decertified in 2010, but re-certified in 2011 and one attorney who should have been included in the 2010 numbers, but was not. There was a discrepancy in the reported number of Real Property Specialists as of December 2011 and the agency has been asked to look into this.

² While one attorney did not renew in 2012, another attorney moved from "inactive" to "active" status, but was not newly certified.

Table 2 shows the total number of certified specialists in the past eight years. After experiencing a decrease in numbers from 2008 to 2010, the total number of certified lawyers has continued to increase substantially since 2011, mostly due to the new MSBA accredited sections of Criminal Law and Labor and Employment Law.

Table 2: Total Number of Certified Specialists (2005-2012)

	2005	2006	2007	2008	2009	2010	2011	2012
ABC Consumer Bankruptcy	6	4	5	5	5	5	5	5
ABC Business Bankruptcy	8	7	7	7	7	7	7	7
ABC Creditors' Rights	3	3	3	3	3	2	2	2
MSBA Civil Trial Practice	326	326	320	323	318	315	308	297
MSBA Criminal Law ³	-	-	-	-	0	12	27	46
MSBA Labor & Employment Law ⁴	-	-	-	-	0	6	76	101
MSBA Real Property	344	356	349	362	351	355	355 ⁵	364
NBLSC Family Law Trial Advocacy	6	6	5	4	4	4	3	3
NBLSC Civil Trial Practice	159	154	145	139	138	131	126	120
NBLSC Criminal Law	13	14	13	13	13	11	12	11
NELF Elder Law	2	2	2	4	5	5	5	5
TOTAL	867	872	849	860	844	854	923	961

III. FISCAL SUMMARY

The Minnesota Board of Legal Certification is funded by fees paid to the Board by accredited agencies. Agencies pay an annual fee that is determined by the number of certified lawyers the agency has in each of its specialty fields.

A. Revenue

Agencies applying for accreditation pay an initial application fee of \$1,000; thereafter, accredited agencies pay an annual fee of \$250, as well as an annual fee of \$45 per certified lawyer. In addition, every three years each agency is assessed a re-certification fee in the amount of \$900. The Board conducts a thorough review of each agency's program every three years. Given the increase in the number of

³ The MSBA Criminal Law Section was accredited to certify lawyers in the specialty field of Criminal Law in November 2009.

⁴ The MSBA Labor and Employment Law Section was accredited to certify lawyers in the specialty field of Labor and Employment Law in November 2009.

⁵ There was a discrepancy in the reported number of Real Property Specialists as of December 2011 and the agency has been asked to look into this.

certified specialists, the current fee structure is expected to generate sufficient revenue to meet the expenses for next year.

Table 3 below shows the Board's sources of revenue and compares 2012 receipts with previous years. Revenue fluctuates from year to year based on the number of specialty areas that are due for the three-year recertification and the number of applicants for initial certification. The revenue in 2012 increased by a total of \$1465.

Table 3: BLC Receipts for Calendar Years 2007-2012

	2007	2008	2009	2010	2011	2012
Agency Fees						
Application Fee	\$0	\$0	\$2,000	\$0	\$0	\$1,000
Recertification Fee	\$900	\$900	\$6,300	\$1,800	\$2,700	\$3,600
Annual Fee	\$2,250	\$2,500	\$2,000	\$2,500	\$2,750	\$2,500
Lawyer Fees						
Initial Fee	\$500	\$3,900	\$1,000	\$2,900	\$9,200	\$6,900
Annual Fee	\$37,800	\$36,990	\$37,045	\$36,720	\$37,935	\$40,050
Total	\$41,450	\$44,290	\$48,345	\$43,920	\$52,585	\$54,050

B. Expenses

The Board shares resources and facilities with the Board of Law Examiners and the Board of Continuing Legal Education and contributes 3% to overhead expenses. This percentage was decreased from 5% during 2012 based on a study of the total budgets, salary budgets, and office workload for the three boards. The Board also shares personnel with the Board of Law Examiners and the Board of Continuing Legal Education. In 2012, the salary allocation for staff was as follows: Director: 5%; BLC/CLE Administrator: 10%; Assistant Director and Counsel: 5%; Part time Attorney (beginning in July 2012): 5%; Director's Assistant: 5%; and Staff Assistant: 15%.

The Board continues to operate conservatively and anticipates generating sufficient revenue to meet the Board's expenses for 2013.

IV. LAWYER ADVERTISING

The Board's staff monitors lawyer advertisements found in Minnesota telephone directories, firm websites, online directories, and other publications so that it may identify lawyers who may be improperly advertising a specialty status or a certified status in possible violation of Rule 7.4(d) of the Minnesota Rules of Professional Conduct. Rule 7.4(d) prohibits all but certified lawyers from referring to themselves

as “specialists” or “certified specialists.” Certified lawyers must list the name of the certifying agency when they advertise their specialty status.

When the Board identifies a possible violation of Rule 7.4(d), it contacts the lawyer and asks the lawyer to conform the advertisement to the requirements of Rule 7.4(d) or discontinue the use of the advertisement. If the matter is not resolved voluntarily, the Board forwards the information to the Lawyers Professional Responsibility Board for investigation. In 2012, the Board contacted 11 lawyers who appeared to be inappropriately referring to themselves as specialists or certified specialists or had failed to list the certifying agency. All lawyers agreed to discontinue use of the inappropriate advertisement, or to modify the language of the advertisement to include the name of the certifying agency.

V. BOARD MEMBERS

The Board of Legal Certification is comprised of 12 Board members, including nine lawyer members and three public members. The Minnesota State Bar Association nominates three of the nine lawyer members to the Board. The Minnesota Supreme Court appoints all members to the Board. In 2012, the Board included:

Reid Lindquist, Lommen, Abdo, Cole, King, Stageburg, P.A., Chair
Charles H. Andresen, Andresen & Butterworth, P.A.
Patricia Beety, League of Minnesota Cities
Howard L. Bolter, Fishman, Carp, Bescheinen, Bolter & Van Berkomp, Ltd.
Candace Dale, Dale Law, PLLC
Hon. Kathryn Davis Messerich, First Judicial District
M. William O’Brien, Miller, O’Brien, Jensen, P.A.
Raj Pillai, Public Member
Rick Preston, Public Member
Lawrence Rocheford, Jardine, Logan & O’Brien, P.L.L.P.
Ralph Scorpio, Public Member
Marshall H. Tanick, Mansfield, Tanick & Cohen, P.A.

Justice Christopher Dietzen is the current Supreme Court liaison to the Board. M. William O’Brien was appointed to serve as Chair in 2013.

In addition to the Board’s commitment to quarterly meetings, Board members also sit on committees of the Board, which meet on a regular basis. The standing committees in 2012 included: Bankruptcy/Creditors Rights, Criminal Law, Civil Trial Advocacy, Elder Law, Family Law, Labor & Employment, Operations & Finance, and Real Property.

VI. CONCLUSION

The Board continued to see an increase (4%) in the number of certified lawyers in 2012. The Board operates a strong accreditation program reviewing and accrediting organizations that certify lawyers as specialists. The Board is committed to enforcing high standards among accredited agencies thus ensuring that those who are qualified to use the designation "specialist" or "certified specialist" in Minnesota have significant legal experience and a high level of legal expertise.

Respectfully submitted,

MINNESOTA BOARD OF LEGAL CERTIFICATION



M. William O'Brien
Chair



Margaret Fuller Corneille
Director

Dated: September 3, 2013