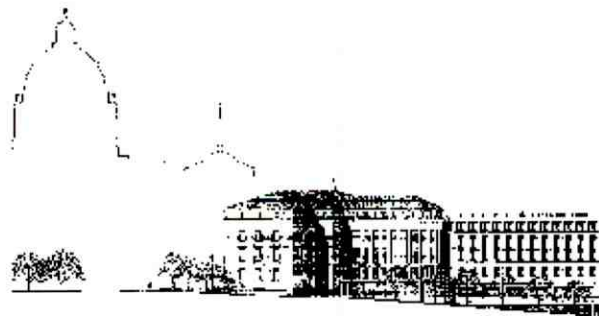


**State of Minnesota**

**Board  
of  
Legal Certification**



**ANNUAL REPORT  
CALENDAR YEAR 2011**

## **MINNESOTA BOARD OF LEGAL CERTIFICATION ANNUAL REPORT: 2011**

The Minnesota Board of Legal Certification ("Board") has been accrediting the agencies that certify Minnesota lawyers as specialists in certain 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 as well as individual members of the bar.

The Board is comprised of twelve members, three of whom are nominated by the Minnesota State Bar Association. All twelve members, including three non-lawyer public members, are appointed by the Minnesota Supreme Court and serve three-year terms.

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.

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 provisional 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:

- licensed to practice law and on active status in Minnesota;
- “substantial involvement” in the field of law during the three-year period immediately preceding certification;
- 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 completed an examination of the lawyer’s knowledge of the substantive, procedural and related ethical law in the field of law; and
- provided evidence of completion of approved 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, 2011, 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, 2011, the four organizations listed above report a total of 923 Minnesota lawyers who are certified specialists, compared to 854 as of December 31, 2010. The increase is the result of the accreditation of the MSBA’s Criminal Law specialty and the Labor and Employment Law specialty in 2009.



## **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 80% of the Minnesota attorneys certified as specialists are certified by the MSBA. As of December 31, 2011, the MSBA had a total of 763 certified specialists, a significant increase over 2010. The new specialty fields of Criminal Law and Labor & Employment Law, which were accredited at the end of 2009, account for this increase. (See Table 2 below.)

Three lawyers were newly certified as Civil Trial specialists by the MSBA in 2011, including one specialist whose certification lapsed but later was recertified. The MSBA administered the civil trial exam on April 16, 2011 and October 15, 2011, and tested a group of three lawyers. 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, 2011, there were 308 MSBA-certified Civil Trial Practice specialists, seven fewer than in 2010. 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 harder to gain courtroom experience.

Of the MSBA sections which are accredited, the Real Property Section has the largest number of certified lawyers. The Real Property Section administers its examination every other year; 2011 was not an exam administration year. As of December 31, 2011, there were 352 specialists certified by the MSBA as Real Property specialists, a decrease of 3 from the previous year.

Fifteen lawyers were newly certified as Criminal Law specialists by the MSBA in 2011, bringing the total number of lawyers certified as Criminal Law specialists to 27.

The Labor and Employment Law Section is the newest of the MSBA sections accredited to certify lawyers. The Section certified 70 Labor and Employment Law specialists in 2011, significantly increasing the number of certified lawyers from 6 to 76.

## **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 American Bankruptcy Institute and the Commercial Law League of America. ABC's goal is to provide information to consumers on bankruptcy law services, and assists consumers with finding qualified lawyers in their area. ABC also distributes a Directory of Board Certified Attorneys.

As of December 31, 2011, there were 14 Minnesota lawyers certified as specialists by ABC, the same number as in 2010. (See also Table 2 below.) No Minnesota lawyers applied for certification or took ABC's certification examination in 2011.

## **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, 2011, NBLSC listed 126 lawyers as certified Civil Trial specialists; 12 Criminal Law specialists; and 3 Family Law Trial Advocacy specialists. These numbers represent a slight decrease from previous years. (See Table 2 below.)

## **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, 2011, five Minnesota lawyers are certified as Elder Law specialists, the same number as in 2010.



## 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**

<b>Certifying Agency</b>	<b>Specialty</b>	<b>Total Number of Certified Lawyers as of 12/31/10</b>	<b>Lawyers Newly Certified in 2011</b>	<b>Lawyers who did not renew in 2011</b>	<b>Total Number of Certified Lawyers as of 12/31/11</b>
ABC	Consumer Bankruptcy	5	5	0	5
ABC	Business Bankruptcy	7	7	0	7
ABC	Creditors' Rights	2	0	0	2
MSBA	Civil Trial Practice	315	3	10	308
MSBA	Criminal Law	12	15	0	27
MSBA	Labor & Employment Law	6	70	0	76
MSBA	Real Property	355	0	5	352 <sup>1</sup>
NBLSC	Civil Trial Practice	131	1	6	126
NBLSC	Criminal Law	11	2	0	12
NBLSC	Family Law Trial Advocacy	4	0	1	3
NELF	Elder Law	5	5	0	5
<b>TOTAL</b>	<b>All Specialty Areas</b>	<b>854</b>	<b>108</b>	<b>22</b>	<b>923</b>

<sup>1</sup> 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.

Table 2 shows the total number of certified specialists in the past eight years. After experiencing a decrease in numbers for the past several years, the total number of certified lawyers increased substantially in 2011, mostly due to the new MSBA accredited sections of Criminal Law and Labor and Employment Law.

**Table 2: Total Number of Certified Specialists (2004-2011)**

	2004	2005	2006	2007	2008	2009	2010	2011
ABC Consumer Bankruptcy	6	6	4	5	5	5	5	5
ABC Business Bankruptcy	7	8	7	7	7	7	7	7
ABC Creditors' Rights	3	3	3	3	3	3	2	2
MSBA Civil Trial Practice	336	326	326	320	323	318	315	308
MSBA Criminal Law <sup>2</sup>	-	-	-	-	-	0	12	27
MSBA Labor & Employment Law <sup>3</sup>	-	-	-	-	-	0	6	76
MSBA Real Property	348	344	356	349	362	351	355	352
NBLSC Family Law Trial Advocacy	4	6	6	5	4	4	4	3
NBLSC Civil Trial Practice	156	159	154	145	139	138	131	126
NBLSC Criminal Law	15	13	14	13	13	13	11	12
NELF Elder Law	2	2	2	2	4	5	5	5
<b>TOTAL</b>	<b>877</b>	<b>867</b>	<b>872</b>	<b>849</b>	<b>860</b>	<b>844</b>	<b>854</b>	<b>923</b>

### 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 recent increase in the number of certified specialists, the Board does not anticipate a need to make any change to its current fee structure in the near future.

<sup>2</sup> The MSBA Criminal Law Section was accredited to certify lawyers in the specialty field of Criminal Law in November 2009.

<sup>3</sup> The MSBA Labor and Employment Law Section was accredited to certify lawyers in the specialty field of Labor and Employment Law in November 2009.



Table 3 below shows the Board's sources of revenue and compares 2011 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 2011 reflects an increase in both agency fees and attorney fees, mainly due to the number of initial fees collected from lawyers in the Labor and Employment Law specialty.

**Table 3: BLC Receipts for Calendar Years 2006-2011**

	2006	2007	2008	2009	2010	2011
<b>Agency Fees</b>						
Application Fee	\$1,000	\$0	\$0	\$2,000	\$0	\$0
Recertification Fee	\$6,300	\$900	\$900	\$6,300	\$1,800	\$2,700
Annual Fee	\$2,000	\$2,250	\$2,500	\$2,000	\$2,500	\$2,750
<b>Lawyer Fees</b>						
Initial Fee	\$3,300	\$500	\$3,900	\$1,000	\$2,900	\$9,200
Annual Fee	\$37,530	\$37,800	\$36,990	\$37,045	\$36,720	\$37,935
<b>Total</b>	<b>\$50,130</b>	<b>\$41,450</b>	<b>\$44,290</b>	<b>\$48,345</b>	<b>\$43,920</b>	<b>\$52,585</b>

## **B. Expenses**

The Board shares resources and facilities with the Board of Law Examiners and the Board of Continuing Legal Education and contributes 5% to overhead expenses. The Board also shares personnel with the Board of Law Examiners and the Board of Continuing Legal Education. In 2011, the salary allocation for staff was as follows: Director: 5%; BLC/CLE Administrator: 10%; Assistant Director and Counsel: 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 2012.

## **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."



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 2011, the Board contacted 2 lawyers who appeared to be inappropriately referring to themselves as specialists or certified specialists. Both lawyers agreed to discontinue use of the inappropriate advertisement.

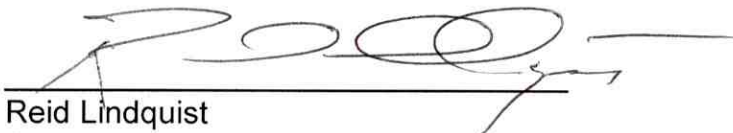

## V. CONCLUSION

In 2011, for the first time in 7 years, the Board saw a significant increase (8%) in the number of certified lawyers. Numbers of certified attorneys increased from 854 in 2010 to 923 in 2011. This was primarily due to the significant increase of Labor and Employment Law specialists certified by the MSBA in Minnesota in 2011. The number of certified lawyers in other sections and certifying agencies remained relatively flat in 2011.

The Board continues to operate 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

  
\_\_\_\_\_  
Reid Lindquist  
Chair  
\_\_\_\_\_  
Margaret Fuller Corneille  
Director

Dated: 10/4/2012