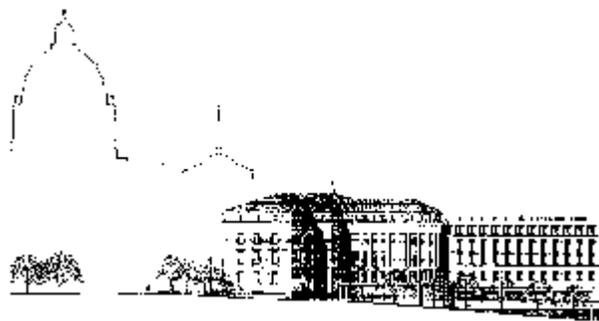


State of Minnesota

**Board
of
Legal Certification**



**ANNUAL REPORT
CALENDAR YEAR 2014**

MINNESOTA BOARD OF LEGAL CERTIFICATION ANNUAL REPORT: 2014

The Minnesota Board of Legal Certification was established by the Minnesota Supreme Court in October 1985 to accredit agencies that certify Minnesota lawyers as specialists in defined fields of law. The Board's purpose in accrediting agencies is to provide the public with enhanced access to appropriate legal services and to ensure that lawyers identified as specialists have the appropriate knowledge and expertise to use such a designation. 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 include the following:

- 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 specific field of law;
- Monitor the accredited agencies and review agencies' applications for recertification; and
- Monitor the public statements of certified lawyers and lawyers who claim to be specialists to determine whether these statements are consistent with the provisions of the Rules of Professional Conduct that address advertisements by certified specialists.

The process of accrediting an agency begins when a prospective certifying agency submits a detailed 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 must submit with the application the written examination used to test applicants' knowledge of the substantive, procedural and related ethical law in a particular field of law.

The Board members review the application and conduct an investigation of any of the agency's claims that appear to require verification. If the agency's application meets all the requirements of the Rules of Legal Certification, the Board will approve the definition and the standards, and the agency is accredited to certify lawyers as specialists in Minnesota.

In order to be accredited, a certifying agency must verify that it will certify as specialists only those lawyers who 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.

Once approved for accreditation, the Board reviews each agency's examinations, standards, and procedures once every three years. The Rules of the Board of Legal Certification state that it is the agency's responsibility to report to the Board the names of all lawyers that they certify on an annual basis and to submit an annual fee for each certified lawyer. The Rules also require that the agency advise the Board within 30 days if any lawyer is decertified. If an agency intends to change its standards, the Rules also require that those changes must be submitted to the Board 60 days prior to the effective date.

As of December 31, 2014, 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

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

- 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)

As of December 31, 2014, the four organizations listed above reported having certified 958 Minnesota lawyers as specialists, compared to 943 as of December 31, 2013, an increase of 1.6%.

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 and Employment Law, and Real Property Law.

Over 85% of the Minnesota attorneys certified as specialists are certified by the MSBA. As of December 31, 2014, the MSBA had a total of 823 certified specialists, an increase from 798 in 2013.

The NBLSC and the MSBA Civil Trial Section have entered into a cooperative agreement through which they use the same test instrument prepared by the NBLSC. This permits lawyers to test simultaneously for certification by either or both agencies. As of December 31, 2014, there were 291 MSBA-certified Civil Trial Practice specialists, six fewer than in 2013. The MSBA reported that some specialists are having difficulty meeting the substantial involvement requirements for trial experience because civil matters are so frequently settled before trial.

The MSBA's Real Property Section has the largest number of certified lawyers, which total 361 as of December 31, 2014. This is an increase of nine over the previous year.

Five additional lawyers were certified as Criminal Law specialists by the MSBA in 2014. Two lawyers failed to recertify, bringing the total number of certified Criminal Law specialists to 55, an increase of three from the previous year.

The Labor and Employment Law Section is the newest of the MSBA sections accredited to certify lawyers. The Section had the largest gain in the number of specialists compared to other fields in 2014. The total number of Labor and Employment Law specialists increased from 99 in 2013 to 116 in 2014, an increase of 17%.

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's purpose statement provides that ABC is "dedicated to serving the public and improving the quality of the bankruptcy and creditors' rights law bars." 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. ABC also produces a Directory of Board Certified Attorneys.

As of December 31, 2014 there were ten Minnesota lawyers certified as specialists by ABC, a decrease of four from 2013 (see **Table 2**). No Minnesota lawyers applied for certification or took ABC's certification examination in 2014.

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 in Minnesota as specialists in the areas of Civil Trial Practice, Criminal Law, and Family Law Trial Advocacy. As of December 31, 2014, NBLSC listed 109 Minnesota lawyers as certified Civil Trial specialists, eight Criminal Law specialists, and four Family Law Trial Advocacy specialists. These numbers represent a slight decrease from previous years (see **Table 2**).

In June 2012, the Board of Legal Certification received an application from the Board of Civil Pretrial Practice Advocacy (NBCPPA), a subsidiary of the National Board of Legal Specialty Certification (NBLSC). The NBCPPA sought to certify lawyers as Civil Pretrial Specialists. The NBCPPA proposed the following definition:

Civil Pretrial Practice: Civil Pretrial Practice includes the preparatory steps for all disputes before a tribunal, including litigation proceedings from inception of litigation through discovery, pretrial motions and hearings, and alternative dispute resolution procedures.

The Board met and reviewed the application, and conducted discussions with the NBCPPA throughout 2013. Following careful consideration, the Board concluded the following with respect the application:

The National Board of Legal Specialty Certification had failed to establish a clear line between pre-trial practice and trial practice; there was a high likelihood of public confusion as to the scope of what pre-trial certification would cover; the specialty as proposed did not meet the Board's purpose of benefiting the public and the profession; and standards as set forth in the application, are inconsistent with civil litigation practice in Minnesota.

On February 13, 2014, the Board denied the application. The NBCPPA did not appeal the Board's determination.

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, and familiarity with the social services aspect of working with elderly

clients. As of December 31, 2014, four Minnesota lawyers are certified as Elder Law specialists, a decrease of one from 2013.

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	Number of Certified Lawyers as of 12/31/13	Lawyers Newly Certified in 2014	Lawyers who did not renew in 2014	Number of Certified Lawyers as of 12/31/14
ABC	Consumer Bankruptcy	5	0	2	3
ABC	Business Bankruptcy	7	0	1	6
ABC	Creditors' Rights	2	0	1	1
MSBA	Civil Trial Practice	297 ¹	9	15	291
MSBA	Criminal Law	52	5	2	55
MSBA	Labor & Employment Law	99	18	1	116
MSBA	Real Property	353 ²	19	11	361
NBLSC	Civil Trial Practice	111	3	5	109
NBLSC	Criminal Law	9	0	1	8
NBLSC	Family Law Trial Advocacy	3	1	0	4
NELF	Elder Law	5	0	1	4
TOTAL	All Specialty Areas	943	55	40	958

Table 2 shows the total number of certified specialists in the past eight years.

Table 2: Total Number of Certified Specialists (2007-2014)

	2007	2008	2009	2010	2011	2012	2013	2014
ABC Consumer Bankruptcy	5	5	5	5	5	5	5	3
ABC Business Bankruptcy	7	7	7	7	7	7	7	6
ABC Creditors' Rights	3	3	3	2	2	2	2	1
MSBA Civil Trial Practice	320	323	318	315	308	297	297	291
MSBA Criminal Law ³	-	-	0	12	27	46	52	55
MSBA Labor & Employment Law ⁴	-	-	0	6	76	101	99	116
MSBA Real Property	349	362	351	355	355	362	353	361
NBLSC Family Law Trial Advocacy	5	4	4	4	3	3	3	4
NBLSC Civil Trial Practice	145	139	138	131	126	120	111	109
NBLSC Criminal Law	13	13	13	11	12	11	9	8
NELF Elder Law	2	4	5	5	5	5	5	4
TOTAL	849	860	844	854	923	959	943	958

¹ The 2014 MSBA Civil Trial Practice annual report corrected the 2013 MSBA Civil Trial Practice annual report by updating the number of certified lawyers at the end of 2013 to be 297.

² The 2014 MSBA Real Property annual report corrected the 2013 MSBA Real Property annual report by updating the number of certified lawyers at the end of 2013 to be 353.

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.

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 as well as a per lawyer fee.

A. Revenue

Agencies applying for accreditation pay an initial application fee of \$1,000; thereafter, accredited agencies pay an annual fee of \$250 and a fee of \$45 per certified lawyer.

Table 3 below shows the Board's sources of revenue and compares 2014 receipts with receipts of previous years. Revenue fluctuates from year to year as the number of applicants for initial certification fluctuates. The revenue in 2014 increased by \$640 compared to 2013 revenue.

Table 3: BLC Receipts for Calendar Years 2009-2014

	2009	2010	2011	2012	2013	2014
Agency Fees						
Application Fee	\$2,000	\$0	\$0	\$1,000	\$0	\$1,000
Recertification Fee	\$6,300	\$1,800	\$2,700	\$3,600	\$900	\$0 ⁵
Annual Fee	\$2,000	\$2,500	\$2,750	\$2,500	\$3,000	\$2,750
Lawyer Fees						
Initial Fee	\$1,000	\$2,900	\$9,200	\$6,900	\$1,700	\$5,100
Annual Fee	\$37,045	\$36,720	\$37,935	\$40,050	\$42,480	\$39,870
Total	\$48,345	\$43,920	\$52,585	\$54,050	\$48,080	\$48,720

B. Expenses

The Board shares resources and facilities with the Board of Law Examiners, Board of Continuing Legal Education, and the Lawyer Registration Office. The Board of Legal Certification contributes 3% to overhead expenses. The Board also shares personnel with the other three offices. In 2014, the salary allocation for the Board of Legal Certification staff was as follows: Director: 5%; Assistant Director and Counsel: 8%; Part time Attorney: 5%; and Director's Assistant: 8%.

The Board continues to operate conservatively and anticipates generating sufficient revenue to meet the Board's expenses for 2015.

⁵ The Board reduced the recertification fee from \$900 to \$0 as of May 2013.

IV. LAWYER ADVERTISING

The Board's staff monitors lawyer advertisements found on Minnesota lawyers' websites, online directories, and other publications. This monitoring is intended to identify lawyers who may be improperly advertising a specialty or 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 they advertise their specialty status, certified lawyers must list the name of the certifying agency.

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 2014, the Board contacted 14 lawyers or firms who appeared to be inappropriately advertising themselves as specialists or certified specialists or who had failed to disclose the certifying agency in their advertisement. All lawyers who were contacted agreed to discontinue their use of the inappropriate advertisement or to modify the language of the advertisement to include the name of the certifying agency.

V. NEW APPLICATION

The Board received a new application in November 2014 to accredit the National Association of Counsel for Children (NACC) to certify lawyers in the specialty field of Child Welfare. The Board will begin reviewing the application in 2015.

VI. 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 each member to a 3-year term. No member may serve more than two 3-year terms, with the exception of the sitting chairperson, who may serve for a longer period. In 2014, the membership of the Board included:

- M. William O'Brien, Miller, O'Brien, Jensen, P.A., Chair
- Charles H. Andresen, Hanft Fride, P.A.
- Patricia Beety, League of Minnesota Cities
- Howard L. Bolter, Bolter Law, LLC
- Candace Dale, Dale Law, PLLC
- Justice Ericson Lindell, Winthrop & Weinstine
- Marc J Manderscheid, Briggs and Morgan

- Hon. Kathryn Davis Messerich, First Judicial District
- Raj Pillai, Public Member
- Rick Preston, Public Member
- Lawrence Rocheford, Jardine, Logan & O'Brien, P.L.L.P.
- Ralph Scorpio, Public Member

Justice Christopher Dietzen is the current Supreme Court liaison to the Board.

In addition to the Board's quarterly meetings, Board members also sit on committees that meet on a regular basis. The standing committees in 2014 included: Bankruptcy/Creditors Rights, Criminal Law, Civil Trial Advocacy, Civil Pretrial, Elder Law, Family Law, Labor & Employment, Operations & Finance, and Real Property.

VI. CONCLUSION

The Board saw a slight increase (1.6%) in the number of certified lawyers in 2014 and it continues to operate a strong accreditation program, reviewing and accrediting organizations that certify lawyers as specialists. Accredited agencies are held to high standards, thus ensuring that those who are qualified to use the designation "specialist" or "certified specialist" in Minnesota have significant legal experience and proven legal expertise.

Respectfully submitted,

MINNESOTA BOARD OF LEGAL CERTIFICATION



M. William O'Brien
Chair



Margaret Fuller Corneille
Director

Dated: 8/21/2015