

ANNUAL REPORT 2022

MINNESOTA BOARD OF LEGAL CERTIFICATION

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2022 ANNUAL REPORT



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YEAR IN REVIEW - 2022

In 2022, the Board welcomed two new members: Thomas Radio as a MSBA-nominated member and Jessica Thomas as a public member. The Board held three regular meetings throughout the year to discuss accredited agency annual reports, recertification applications, financial updates, and attorney advertisements. The Board also met to approve the FY22-23 budget recommendations to the Court.

At the February 10, 2022 Board meeting, the Board agreed to the Minnesota State Bar Assocation's (MSBA) proposal to change the process for payment of annual attorneys' fees. Based on a prior agreement with the Board, the MSBA submitted payments quarterly (upon collection from certified specialists.) Due to challenges with reconcillation of payments both by the MSBA and the Board in 2021, the MSBA proposed that beginning in 2023, the MSBA would submit the payments with their annual report, the same practice followed by other certifying agencies.

The Board discussed its concerns regarding the continued decrease in the number of specialists, what role the Board should have in promoting certification, and whether there was additional guidance or advice it could or should be providing to the organizations certifying attorneys. The Board also discussed its role as regulator and the need to maintain an appropriate degree of separation between the Board and the agencies the Board accredits. Board staff revised the agency annual reports required from accredited agencies and will be receiving their 2022 statistics in January 2023.

The Board did not receive any applications for accreditation of any new programs or specialty fields in 2022, but did recertify the accreditation of seven (7) existing specialties. The Board approved the MSBA's 2021 Recertification Application in the specialty fields of Labor and Employment, Civil Trial, and Criminal Law. The National Elder Law Foundation's specialty field of Elder Law was also approved in connection with their 2021 renewal. The Board also approved two recertification applications received in 2022, from the International Association of Privacy Professionals in the Privacy Law specialty and the MSBA in the Real Property specialty.

YEAR IN REVIEW – 2022 CONT'D

In June 2021, following multiple years of discussion, the Lawyers' Professional Responsibility Board (LPRB) and the Minnesota State Bar Association (MSBA) both filed Petitions to amend the language of Rule 7 of the Minnesota Rules of Professional Conduct based on August 2018 changes made to the American Bar Association's (ABA) Model Rules of Professional Conduct regarding attorney advertising. The Board agreed at its July 2021 meeting that if the Court put the matter out for public comment, the Board would file comments emphasizing that Minnesota has long deviated from the ABA's Model Rules and the current language of the rule appropriately restricts the use of the terms "specialist" and "certified specialist." The Board discussed that the Board had provided the same feedback to both the MSBA and LPRB throughout their discussion process. The Court put the matter out for public comment in 2021. In December 2021, the Board filed correspondence advocating for the continuation of the current language of Rule 7.4 that protects the public, supports a strong certification program in Minnesota, and remains a narrowly focused appropriate restriction on speech. The matter was heard by the Court in January 2022, where the MSBA, LPRB and the Board provided testimony. On May 13, 2022, the Court issued an related to Rule 7, adopting language similar to the prior 7.4 language regarding specialist advertisements. This decision is consistent with the recommendation made by the Board. The May 13, 2022, Order stated that the revised Rules would become effective July 1, 2022, and requested that the MSBA and the LPRB file amended comments on or before June 17, 2022. The MSBA and LPRB requested an extension of time to file comments, pushing the effective date of the Rules to September 1, 2022.

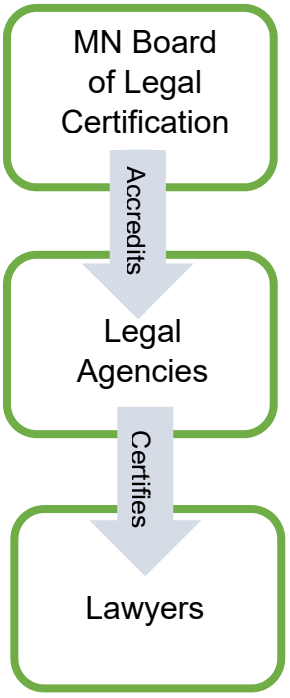
Following the Court's May 2022 Order, the Board resumed its 2018-19 project to draft and propose comprehensive revisions to the Board's Rules, that had been on hold pending the Court's determination on attorney advertisments. The revisions will update administrative processes and improve the clarity and organization of the Rules. The Board referred this matter to its Rules and Policy Committee but invited participation by the entire Board, due to its importance and the upcoming retirement of several veteran members at the end of 2022. This will be the first revision to the Rules since 2002. At the November Board meeting, the Board reviewed the revisions proposed by the Rules Committee and approved the filing of a Rules Petition with the Court in early 2023, once a new Board Chair is appointed.

The Board thanked retiring Board Chair, Andrew Pratt, and retiring Board members Martin Cole and Thomas Jacobson, for their years of service on the Board.

BLC BACKGROUND

BACKGROUND

The Minnesota State Board of Legal Certification accredits agencies to certify lawyers in Minnesota as specialists. The certification process provides the public with assurances that those who have earned the right to call themselves specialists in certain fields of law have met the necessary prerequisites for certification.



Agencies must complete a rigorous application process, which includes providing documentation verifying that the agency has complied with the Rules of the Minnesota State Board of Legal Certification. The Board reviews each agency's standards and examinations at least once every three years.

Certified lawyers must adhere to the agency's standards, which includes, at a minimum, showing substantial involvement in their specific field of law, receiving peer recommendations, and completing a written examination.

BOARD AND STAFF

The Board is comprised of 12 Board members. Nine members have licenses to practice law in the state and practice in various fields of law, and three are non-attorney public members. Three of the 12 attorney members are nominated by the Minnesota State Bar Association (MSBA). Board members are appointed for a three year term, and are eligible to be reappointed once.

The Board shares staff with the Board of Law Examiners, Board of Continuing Legal Education, and the Lawyer Registration Office, and is comprised of a Director, two attorneys, an administrator, and an executive assistant.

2022 BOARD MEMBERS	
CHAIR: Andy J. Pratt, RBC Capital Markets, Falcon Heights	Kellie Reynolds, The American Registry of Radiologic Technologists, Woodbury
Linda S. Birnbaum, Public Member, Mendota Heights	Thomas Radio, Felhaber Larson Law Firm, Minneapolis
Martin A. Cole, St. Paul	Brandon M. Schwartz, Schwartz Law Firm, Oakdale
Cynthia K. Daniels, Public Member, Lakeville	Janet G. Stellpflug, Stellpflug Law PLLC, Minneapolis
Samuel J. Edmunds, Sieben Edmunds Miller PLLC, Eagan	Brendan Tupa, DROEL, PLLC, Bloomington
Thomas A. Jacobson, Swenson Lervick Syverson Trosvig, Alexandria	Jessica Thomas, Public Member, Minneapolis
SUPREME COURT LIAISON	**DIRECTOR**
Justice Gordon Moore, MN Supreme Court	Emily Eschweiler

ACCREDITED AGENCIES

LEGAL AGENCIES THAT CERTIFY LAWYERS

Six legal agencies are accredited to certify Minnesota lawyers as specialists:

1) American Board of Certification (ABC), Alexandria, VA
2) International Association of Privacy Professionals (IAPP), Portsmouth, NH
3) Minnesota State Bar Association (MSBA), Minneapolis, MN
4) National Association of Counsel for Children (NACC), Denver, CO
5) National Board of Trial Advocacy (NBTA), Wrentham, MA
6) National Elder Law Foundation (NELF), Tucson, AZ

CERTIFIED SPECIALTY FIELDS

The accredited agencies listed above are approved to certify lawyers in these 14 specialties:

MSBA
Civil Trial Practice
Criminal Law
Labor & Employment Law
Real Property

ABC
Business Bankruptcy
Consumer Bankruptcy
Creditors' Rights

NBTA
Civil Trial Practice
Criminal Law
Family Law
Truck Accident Law

IAPP
Privacy Law

NACC
Child Welfare Law

NELF
Elder Law

CERTIFIED SPECIALISTS

Accredited agencies submit annual reports to the Board and provide statistics on the number of Minnesota lawyers certified, recertified, and decertified, as well as how many new lawyers have applied for their programs. **Chart 1** shows the number of certified specialists over the last several years, and **Table 1** shows the number of certified specialists for each agency specialty field. There continues to be a decrease in the number of certified specialists, as certified lawyers are retiring faster than new lawyers become certified, and some lawyers indicate it is more difficult to meet certain requirements, such as a specified number of trials. The Board routinely asks agencies for information on how the agency promotes certification. Most agencies state they advertise through newsletters, social media outlets, or by attending conferences.

Chart 1: Number of Certified Minnesota Specialists from 2016 - 2022

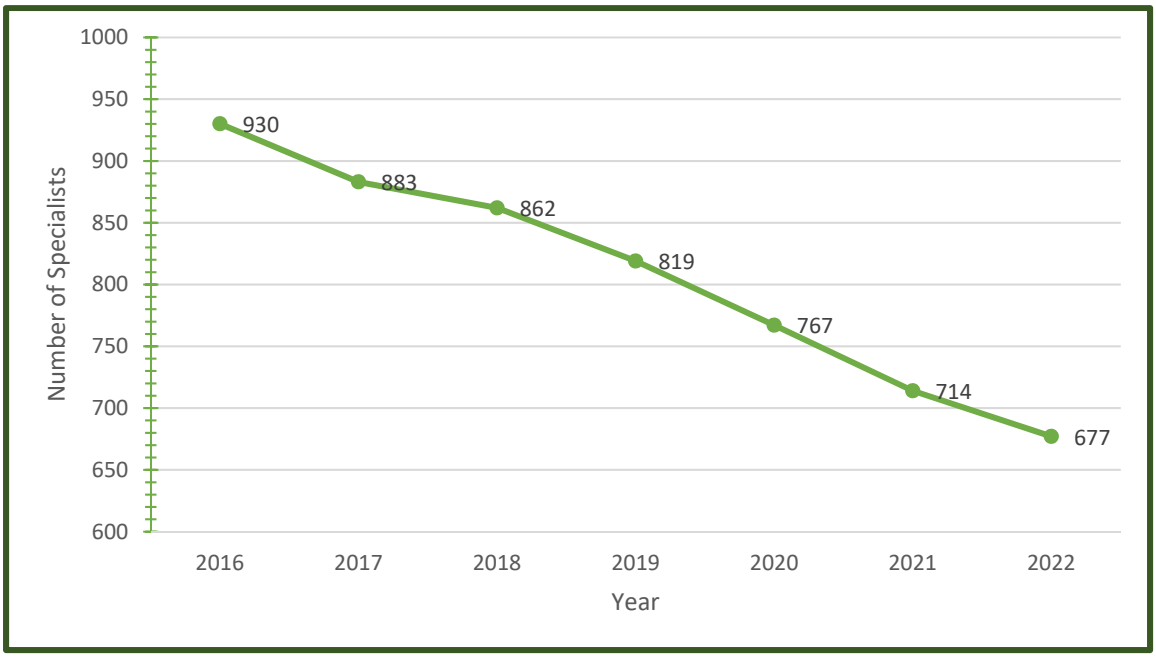


Table 1: Minnesota Certified Specialists per Specialty Field from 2016 – 2022

AGENCY/SPECIALTY	2016	2017	2018	2019	2020	2021	2022
ABC Consumer Bankruptcy	3	3	3	3	3	2	1
ABC Business Bankruptcy	5	5	5	3	3	5	5
ABC Creditors' Rights	1	1	1	1	1	1	1
MSBA Civil Trial Practice	281	268	253	239	211[1]	189	178
MSBA Criminal Law	63	59	65	56	58	56	54
MSBA Labor & Employment Law	117	112	113	111	110[2]	103	98
MSBA Real Property	341	322	317	306	287[3]	272	261
NACC Child Welfare Law	0	0	0	0	0	0	0
NBTA Family Law Trial Advocacy	12	13	13	13	12	12	13
NBTA Civil Trial Practice	95	89	81	72	66	57	50
NBTA Criminal Law	8	8	8	8	8	7	7
NBTA Truck Accident Law	--	--	--	1	1	1	1
NELF Elder Law	4	3	3	3	3	3	3
IAPP Privacy Law	--	--	--	3	4	6[4]	5
Total	**930**	**883**	**862**	**819**	**767[5]**	**714[6]**	**677**

[1] Updated in 2021, initially reported as 206 due to MSBA reporting tool issues.
[2] Updated in 2021, initially reported as 109 due to MSBA reporting tool issues.
[3] Updated in 2021, initially reported as 285 due to MSBA reporting tool issues.
[4] Updated in 2022, initially reported as 5 due to IAPP missing a cerfied specialist in their 2021 report.
[5] Updated in 2021, initially reported as 759 due to MSBA reporting tool issues.
[6] Updated in 2022, initially reported as 713 due to IAPP missing a specialist in 2021 report.

FUNDING

The Board is self-funded through certified lawyer and agency fees:

- Agency application fees: $1,000
- Agency annual fees: $250 per specialty field
- Lawyer annual fee: $45
- Initial lawyer certification fee: $100

The Board's cash-carry-forward fund balance is decreasing each year due to the number of certified lawyers decreasing. The Board reviews revenue and expenditure as part of its budgeting process. In 2013, the Board's budget recommendation for FY14 included the elimination of the $900 recertification fee paid by agencies to recertify their accreditation. The Board anticipated that the cash-carry-forward balance would be impacted by the change and advised the Court that it would continue to monitor the impact and would make recommendations for future revenue modifications, if needed. At the FY22-23 mid-biennium update, the Board reduced salary allocations by 2% per staff member to better align with workload. The 2% reduction was absorbed by the Board of Law Examiners. This reduction will aid in the Board's need to reduce expenditures in order to maintain a healthy cash balance. In the spring of 2023, the Board will prepare a FY24-25 biennium budget request for the Court, and look at ways to continue reducing its expenditures.

Revenue: Calendar Years 2018-2022

	2018	2019	2020	2021	2022
Agency Application Fees	$1,000	$1,000	$0	$0	$0
Annual Agency Fees	$2,750	$3,000	$3,000	$3,500	$3,750
Annual Lawyer Fees	$35,865	$36,180	$32,265	$31,815	$10,020
New Lawyer Fees	$3,100	$850	$150	$1,300	$1,345
Total	**$42,715**	**$41,030**	**$35,415**	**$38,636**	**$15,115**

Expenses: Calendar Years 2018-2022

	2018	2019	2020	2021	2022
Salaries	$27,026	$37,520	$35,347	$38,108	$33,815
Rent	$5,082	$5,627	$5,996	$2,693	$6,981
Other (supplies, equipment, etc.)	$4,773	$6,778	$3,356	$5,175	$7,065
Total	**$36,881**	**$49,925**	**$44,699**	**$45,975**	**$47,861**

Respectfully submitted,

MINNESOTA BOARD OF LEGAL CERTIFICATION

Kellie Reynolds

Kellie Reynolds, Chair

Emily J. Eschweiler, Director

Date: **May 25, 2023**