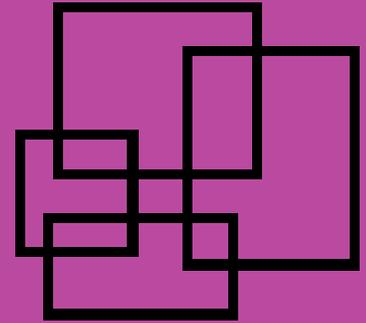


# CERTIFICATION LINK

Your ABA Quarterly Specialization Connection



FEBRUARY 2002

## Newslink

What's new from programs across the country



◆ The **National Board of Trial Advocacy's** web site, [www.nbtanet.org](http://www.nbtanet.org), has undergone a complete overhaul to achieve a new look and new features for both legal services consumers and NBTA's certified membership. New additions include an updated "Consumer Resources" button, a "Case Studies" feature and an "About Our Members" section, which illustrates who NBTA certificate holders are beyond their legal practice.

◆ The **American Board of Certification** elected new officers and directors at its most recent annual meeting. Elected Chair of the Board of Directors is **Harry W. Greenfield**, of Buckley King & Bluso, a legal professional association in Cleveland, Ohio. The newly elected President is **James T. Markus** of Block Markus Williams, L.L.C. in Denver, CO. Elected as First Vice

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## Sowing the Seeds of Certification

By *Dawna G. Bicknell*  
*Florida Board of Legal Specialization and Education*

In Florida, we stand on the threshold of both our 20th year and our 20th area of practice. Our program, which has its roots in the Bars' pre-existing Designation Plan, is akin to an adolescent oak tree, sturdy in its foundation, steady in its growth, and naturally seeking to branch out. We now foresee new growth through the emergence of even more narrow descriptions of legal expertise.

Many of you will recognize sub-specialization as an already successful physician-practice identifier. Under the American Board of Medical Specialties, certificates are available in 87 sub-specialty areas, under 40 general certification areas, with oversight by 24 boards. This has proven to be a valuable resource for medical reference, and has established criteria for professional standards upon which the public may comfortably rely.

As policy makers and administrators, we are naturally wary of attempting to identify and define comparable law-related sub-specialty areas. Our experience tells us such areas will prove to be diverse and the applicant pool will be small, yet determined. Nevertheless we should be neither shortsighted nor discouraged by the complexities of such an undertaking. Sub-specialization already exists de facto in many instances

and we should consider whether it is in the public's or the Bars' interest to recognize or regulate its existence.

This issue calls us to revisit our purpose. Why do we certify lawyers? First and foremost is to help the public make informed choices in seeking legal counsel. For lawyers, certification encourages

further professional development and education, enhances credibility and assists in marketing. For the profession, it acknowledges and distinguishes

professional practice standards and encourages lawyers to remain current in their practice areas. These are commendable reasons to justify the commitment we have made to our specialization programs and organizations. If sub-specialization will enhance these efforts, the question is, should we move forward?

As designed, Intellectual Property Law may be our first branch into sub-specialization. Under this general category, practitioners will have the

**For lawyers, certification encourages further professional development and education, enhances credibility and assists in marketing**

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Certification Link wants to know what's new.  
Email updates to [elym@staff.abanet.org](mailto:elym@staff.abanet.org).

President is **John D. Penn** of the Fort Worth, Texas office of Haynes and Boone, LLP.

◆ New Hampshire has joined the other 17 states which recognize the ABA's accreditation of Lawyer Specialty Certification Programs. The Supreme Court has issued a temporary change to the Rules of Professional Conduct regarding lawyer advertising. The new rule allows lawyers to advertise that they "specialize" if they have ABA-accredited specialty designations that previously were not allowed by NH conduct rules.

◆ Specialty Certification and ABA Accreditation of Certifying Programs have been recognized in the new ABA Model Rules of Professional Responsibility. The modifications to Rule 7.4, in part suggested by the Standing Committee, passed without comment at the ABA Mid-Year Meeting in Philadelphia earlier this month. The new rule is entitled "Communication of Fields of Practice and Specialization." New paragraph (d) states that a lawyer may not state or imply that he or she is certified as a specialist unless they are certified by an organization that has been approved by an appropriate state authority or accredited by the ABA. Certified specialists must also identify the name of the certifying organization. For more information on the new Model Rules, go to [www.abanet.org/cpr/ethics2k.html](http://www.abanet.org/cpr/ethics2k.html).

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# Survey Says Certified Attorneys Recognize Benefits

By Michelle Anderson  
American Board of Certification

Attorneys are encouraging their peers to become certified, which validates the growth in specialization programs. This conclusion is confirmed by the recent The American Board of Certification (ABC) survey sent to all ABC certified attorneys along with their annual statements in September 2001. When asked the question "Do you feel your certification is recognized within the bankruptcy and/or creditors rights communities?" an overwhelming 92 percent responded in the affirmative. Another question asked was "Do you recommend certification to qualified colleagues?" and 89 percent answered yes. The responses to both questions indicate that certified attorneys find great value in certification.

Sixty-four percent said that they had obtained additional referrals due to certification. When asked about how many referrals received, the answers varied greatly. Those who had received referrals reported getting an average of eight referrals each. Some reported as many as 10-25 referrals per year attributed to certification. One attorney wrote, "I have been certified for less than four months and have

received over ten referrals due to my certification." ABC estimates that the variance is partly due to differences in the marketplace for securing counsel between bankruptcy and creditors' rights practices resulting in more referrals for bankruptcy attorneys. Attorneys in states with fewer certified attorneys to choose from also may enjoy more referrals due to less competition.

A series of questions regarding advertising were included on the survey. Sixty-eight percent said that they have stated certification on their letterhead and 22 percent communicate certification on their business cards. Only 7% report using the ABC logo on communications; the logo has only been available since July 2002 when ABC established a logo licensing agreement, so hopefully the survey reminded them of the availability.

While 97 percent said that they had access to e-mail and the Internet, only 63 percent reported ever visiting the ABC website. Of those who had visited the site, 66 percent indicated that they visited the site frequently or at least occasionally.

The survey asked if the certified attorneys had raised their billing rates as a result of certification; 14 percent responded that they had. ABC has not promoted higher hourly fee rates as a

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## Job Profile: NBTA State Compliance Administrator

By Jennifer Povill  
National Board of Trial Advocacy

As far as I know, I am currently the sole State Compliance Administrator within the national legal certification realm. As the National Board of Trial Advocacy's (NBTA) State Compliance Administrator, I have three main areas of responsibility: to keep abreast of rule changes regarding the disclosure of certification designations (submitting comment where states are considering some method of recognition and encouraging our members to do likewise); to apply for accreditation and re-accreditation in those states that have an established process for recognizing outside certifying agencies; and to insure that NBTA and our individual members each comply with any number of annual or semiannual reporting responsibilities to the state authorities which recognize NBTA as an accredited agency.

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## Survey Says-Continued from page 2

benefit of certification, but plans to do so in the future. Some certified attorneys wrote that they did plan to raise their rates due to their certified status. Respondents wrote in many interesting comments in response to the final question "How could our program be changed to better meet your needs?" Many attorneys in states that do not recognize or prohibit communication of certification

**"Do you recommend certification to qualified colleagues?"**  
**89 percent answered yes.**

made comments about pursuing changes in their state's rules. Numerous complaints were made about burdensome state disclaimer requirements. Others cited the need to increase awareness of certification to the public and the legal industry. One attorney suggested, "Don't hold the exam on the same day as the ABI golf tournament." ♦

## Seeds of Specialization-Continued from page 2

opportunity to select one or more of four sub-specialty areas: patent law, patent litigation, trademark law or copyright law; each distinguishable in its own right. As currently drafted, each sub-specialty is distinctly defined. The standards set forth an educational requirement of 40 hours in intellectual property law including a minimum of 10 hours in courses or activities substantially relating to each sub-specialty. For substantial involvement, 30 percent of the applicant's practice must be devoted to each sub-specialty or 20 percent, if all four sub-areas are sought. Testing, likewise, is recommended by the proponents to be sub-specialty specific (with an exception for those who select patent law because they must first be Registered Patent Attorneys or Agents, and therefore will not be required to take an exam on topics covered by the USPTO in its examination for Registration of Patent Attorneys or Agents).

Consideration of this new field and its sub-parts has prompted Florida's Board of Legal Specialization and Education (BLSE) to look at the forest beyond the trees. Although aware of the pitfalls, the Board's pursuit is mindful of the Darwinism: "It is not the strongest of the species that survives, nor the most intelligent; it is the one that is most adaptable to change."

Recognizing that there is wisdom in the real world that should not go untapped, the BLSE has embarked upon this sub-specialty venture in a manner appropriate with our gracious, Southern tradition. The BLSE has presented to all

the certification committees and relevant sections in the Bar questions such as these:

- Would the certification program benefit from the introduction of sub-specialization?
- Would sub-specialty certification help the public? Conversely, are we doing the public a disservice by not having sub-specialization?
- Should attorneys be certified in a general area first before being eligible to seek a sub-specialty or, alternatively, should certification be granted only in a particular sub-specialty in which an attorney practices?
- Has the absence of sub-specialization already discouraged attorneys from applying for fear of being more broadly tested in areas beyond one's expertise?
- How will sub-specialties impact the application process? Should we only test in the sub-specialty? Would such direct focus testing be prohibitively expensive or complicated? What attorneys would be solicited for peer review?
- Given an attorney's ethical obligation not to handle a matter for which he or she is not qualified, are sub-specialties really necessary?

Specialization is a reasonable response to a growing demand for heightened efficiency, quality service and quick solutions. It is incumbent upon those who are responsible for nurturing and shaping the future of certification programs to consider these questions and to be mindful of the delicate balance between effort required and benefit derived. ♦

## Newslink (continued)

### Upcoming Events

**2002 Roundtable on  
Lawyer Specialty  
Certification**  
March 21-24, 2002  
Charleston, SC

For more information:  
[www.LegalSpecialists.org](http://www.LegalSpecialists.org)

**American Bankruptcy  
Institute (ABI) Spring  
Meeting**  
April 18-21, 2002  
Washington DC

For more information:  
[www.abiworld.org](http://www.abiworld.org)

**National Association of  
Estates Planners &  
Councils (NAEPC) 39th  
Annual Conference**  
November 7-9, 2002

For more information:  
[www.naepc.org](http://www.naepc.org)

**National Academy of Elder  
Law Attorneys (NAELA)  
Institute**  
November 14-17, 2002  
Albuquerque, NM

For more information:  
[www.naela.org](http://www.naela.org)

**Do you have a meeting  
that you want to  
announce?**

**Email us at  
[specialization@abanet.org](mailto:specialization@abanet.org)  
or fax to  
312/988-5710.**

# Don't miss the 2002 Roundtable

**G**reat location, invaluable networking, and informative seminars; this year's Roundtable has all this and more. Our fabulous setting will be historic Charleston, SC.

One of the Roundtable highlights will be our keynote speaker, Justice Craig Enoch of the Supreme Court of Texas. Justice Enoch is a specialist attorney in civil trial law, certified by the Texas Board of Legal Specialization. He will provide a view from the bench on specialty certification.

The sessions will cover a wide variety of topics, from Information and Technology and New Certification Areas to Ethical Obligations and Future Trends. Most programs will be presented in a panel format with ample time for audience participation.

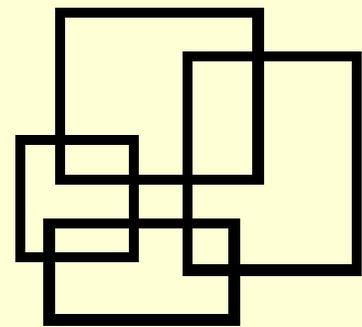
Returning programs include Certification 101 with Mike Ferguson

from the California Board of Legal Specialization presenting the basics and the National Roundtable Players with their informative role-playing exercises.

There will be plenty of time for networking during the Administrators' Workshop and the social events. This year's events include a Welcome Reception hosted by the State Bar of South Carolina and a tour and dinner at Middleton Place Plantation.

Everything you need to register is available on the web. Just go to [www.LegalSpecialists.org](http://www.LegalSpecialists.org) and click on the Roundtable link near the top of the page. You will find a downloadable brochure and registration form.

This year's Roundtable will be one of the best yet, so please join us in Charleston for the 2002 Roundtable. ♦



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## Job Profile-Continued from page 2

Those states that do not necessitate my individual attention include the many that have opted to recognize ABA accredited agencies (thereby relinquishing to the ABA the responsibility of insuring the legitimacy and objectivity of a certification program), and those that either have no method for regulating attorney certification or opt to require disclaimer language. Thankfully, the number of states requiring disclaimer language appears to be on the decline as it most often serves to undermine the significance of a certified designation.

Where a state does have a method for recognizing outside certifying agencies (there are currently twelve states which maintain requirements for the recognition of outside certifying agencies), reporting requirements that fall within my charge may include organizational fees, member fees, initial fees, annual fees, prorated fees, monthly paperwork requirements, yearly paperwork requirements, organizational reports, and individual member reports to any given state authority. I can assure you that no two states have devised the same reporting requirements for national certifying organizations or their certified membership. Furthermore, some state authorities prefer NBTA collect and

maintain on file the required reports, other state authorities prefer that NBTA compile and submit for review the required reports, and some state authorities prefer that the reports are submitted by our individual members (in which case I serve only to remind the members of the necessity of filing).

Of course I understand the importance of insuring that certifying organizations successfully and objectively accomplish the task of identifying those attorneys with the experience and integrity to espouse certified status, but I must admit that the wide scope of standards for recognition of accredited agencies and certified attorneys continues to amaze me.

Many methods exist (including recognition of ABA accredited agencies, requirement of disclaimer language, non-regulation, and the establishment of independent state authorities) by which states are working to accomplish the same ultimate goal, to assist the consumer of legal services in identifying attorneys with an appropriate level of skill and experience within a specified area of expertise. ♦

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