

Development of Legal Specialization in Texas

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State Bar of Texas
Texas Supreme Court: History & Current Practice
April 14, 2021
Webcast

Speaking of Specialization



Ralph W. Brito
President

One of the topics discussed at the National Conference of Bar Presidents held last summer in Chicago was the impact of specialization on the general practice of law and whether or not the interest of the public and of the bar would be served by recognizing and regulating specialization.

Following the meeting in Chicago the American Bar Association's Special Committee on Specialization issued a tentative report concluding that "the promulgation by ABA of a plan to regulate voluntary specialization in various fields of law on a nationwide basis is not desirable at this time."

The Committee cited several reasons for its findings. These included:

1. Problems of inexperience in regulating specialization.
2. Difficulties in defining fields.
3. Lack of criteria for judging proficiency.
4. Uncertain costs, and
5. The inability of the organized bar to determine that lawyers who are at present either generalists or specialists will not be adversely affected by such regulation to the ultimate detriment of the public.

The ABA Committee Report stated that at least 25 state bars have committees studying specialization and it has been suggested to me that "the Texas bar should take immediate steps toward investigation and solution of this problem." Perhaps so, but it seems to me that the reasons cited by the ABA Committee for not recommending a plan on a nation-wide basis are just as applicable to the adoption of any such plan by a State Bar Association.

It seems clear that lawyers are tending more and more to specialize and this is probably all to the good—both for the lawyer and the general public. The problem is in the certification and regulation.

In a separate tentative recommendation the ABA Committee proposed that the following provisions be added to the Canons of Professional Ethics:

1. A lawyer should not knowingly assume legal representation which is beyond his existing competence, or which he cannot perform without unreasonable risk or expense to his client.
2. A lawyer who elects to confine his practice to one or more fields of law may publish a statement in reputable law lists and legal directories that he so confines his practice. If he does so publish, then he must confine his practice to the fields designated and not accept professional employment in other fields of law. Such limitation of practice should not permit the lawyer to hold himself out in the form of publications or otherwise as possessing special competence in fields of the law to which he has so confined his practice.
3. A lawyer has a duty to maintain and enhance his legal ability by participating particularly in those continuing legal educational programs essential to the proficient handling of legal work of his clients.

It may be that we in the State Bar are derelict in our duty in not pursuing this subject more diligently but, considering that we would be changing a system that has developed over many years, and considering the practical difficulties in administering any such plan, I believe we should let some other bar association take the lead in developing a pilot program, at least until such time as the evidence is a little stronger that the bar and the public will not be adversely affected by the adoption of any such plan or system.

Ralph W. Brito

Comments Invited

Texas Plan for Recognition, Regulation Of Specialization in the Law Suggested

What do you think about the creation of a Texas Board of Legal Specialization?

Ralph Elliott, State Bar director from Sherman, presented such a proposal to the board of directors at its meeting in McAllen last month on behalf of a State Bar committee.

The board took the proposal under advisement, but authorized it to be published for the information of all State Bar members.

Mr. Elliott invites interested persons to study the proposal, then send their comments to the committee chairman: William J. Derrick, 1500 First National Building, El Paso, Texas 79901.

The proposal follows:

TEXAS PLAN FOR RECOGNITION AND REGULATION OF SPECIALIZATION IN THE LAW

I. Purpose and Objective

To promote the availability, accessibility and quality of the services of lawyers to the public in particular fields of the law is to serve the public interest and advance the standards of the legal profession. That is the purpose and objective of the following program for the recognition and regulation of those lawyers who have special competence in a particular field of the law.

II. Texas Board of Legal Specialization

The State Bar of Texas hereby establishes a Texas Board of Legal Specialization (hereinafter referred to as the "Board"). The Board shall be composed of nine members appointed by the President of the State Bar of Texas, with the approval of its board of directors. The Board shall be representative of the legal profession in Texas and shall consist only of practicing lawyers, some of whom specialize and some of whom are in general practice. All members shall hold office for three years and until their successors are appointed. Members shall be appointed to staggered terms of office, and the initial

appointees shall serve as follows: three members shall serve until the June 30 next following their appointment; three members shall serve until the second June 30 following their appointment; and three members shall serve until the third June 30 following their appointment. Any vacancy shall be filled in the manner provided for original appointments. All members of the Board shall be eligible for re-appointment but for no more than one additional term.

III. Jurisdiction of the Board

Subject to the continuing jurisdiction of the Board of Directors of the State Bar of Texas, the Board shall have general jurisdiction of all matters pertaining to specialization in the practice of law and shall have the authority and duty to:

(a) Administer the program for the recognition and regulation of specialization in the law.

(b) Upon appropriate petition, define and designate fields of law in which certificates of special competence may be granted and provide procedures by which such fields may be determined, redefined or eliminated.

(c) Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates of special competence to lawyers in defined and designated fields of law, after public hearings on due notice, have been held.

(d) Provide procedures for the investigation and testing of the qualifications of applicants and certificate holders and to award certificates of special competence in a form approved by the Board.

(e) Make and publish reasonable and nondiscriminatory standards for continuing proficiency, recertification or renewal of certificates of special competence after public hearing on due notice.

(f) Encourage law schools, the State

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Bar Committee on Continuing Legal Education, local bar associations and other agencies of continuing legal education to develop and maintain a program of legal education and continuing legal education to meet the standards prescribed by the Board.

(g) Cooperate with other agencies of the State Bar of Texas in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of specialization in the law in the manner determined by the Board.

(h) Cooperate with the Special Committee on Specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization.

(i) Report as required, but at least annually, to the Board of Directors of the State Bar and to advise such Board concerning the appointment of advisory commissions.

(j) Make and publish standards, rules and regulations to implement this authority, all in accordance with the limitations on the power of the Board and the minimum standards prescribed by the Board.

IV. Limitations on Power of the Board

The following limitations on the power of the Board are established:

(a) No standard shall be approved which shall in any way limit the right of a certificate holder to practice law in all fields. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is certified in a particular field of law.

(b) No lawyer shall be required to be certified before he can practice law in any particular field of the law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is not certified as a specialist in any particular field.

(c) All requirements for and all benefits to be derived from certification are individual and may not be fulfilled by or attributed to a law firm of which the specialist may be a member.

(d) Participation in the plan shall be on an entirely voluntary basis.

(e) The limit on the number of fields of law in which a lawyer may be certified shall be determined by such practical lim-

its as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the Board.

(f) No rules or standards shall be adopted in contravention of the rules of the State Bar of Texas.

V. Advisory Commissions

Advisory commissions to the Board shall be established for each field of law in which certificates of special competence are to be issued. These commissions shall advise and assist the Board in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in law. Standards for the issuance of certificates of special competence shall be established by the Board, but it will be advised in this and other relevant matters by the advisory commission for each field of law. The advisory commission for each field of law shall be charged with actively administering the program in its particular field in cooperation with and under the general policy guidance of the Board.

Members of the advisory commission shall be appointed by the Board in such number and for such terms as the Board shall direct.

VI. Minimum Standards for Certification

The minimum standards for certification under this program are prescribed below. Each advisory commission may recommend, and the Board may establish, additional or higher standards.

A lawyer (1) who is an active member in good standing of the State Bar of Texas, and (2) who currently maintains an office in the State of Texas, and (3) who meets the requirements prescribed by the Board, shall be granted a certificate in a form approved by the Board which shall certify, under the name of the Board, the lawyer's special competence in a particular field of law designated by the Board as a field of law in which certificates of special competence may be granted.

(a) Requirements for qualifying for certification without examination are:

(i) A minimum of ten (10) years of actual practice of law on a full-time basis.

(ii) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of special competence and substantial involvement in the particular field of law for

which certification is sought during a continuous five-year or other reasonable period (but not less than three years) immediately preceding certification.

(iii) Payment of any fees required by the Board.

Certification without examination may be granted only within a period of two years after the date on which the plan for certification of a particular field of law is made effective by the Board.

(b) Requirements for qualifying for certification by examination are:

(i) A minimum of five years of actual practice of the law on a full-time basis.

(ii) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification is sought for such reasonable period of time immediately preceding certification as may be determined by the Board after advice from the appropriate advisory commission.

(iii) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such educational experience in the particular field of law for which certification is sought as the Board deems advisable.

(iv) Passing a written examination applied uniformly to all applicants before certification to demonstrate sufficient knowledge, proficiency and experience in the field of law for which certification is sought and in the various fields of law relating to such field as is necessary to justify the representation of special competence to the legal profession and to the public.

(v) Passing an oral examination, if determined to be advisable by the Board, with the advise of the appropriate advisory commission.

(vi) Payment of any fee required by the Board. "Substantial involvement," as used in these standards shall be defined by the Board as to each particular field of law from a consideration of its complexity and distinction from other fields, and from consideration of the time and extent of necessary devotion to the particular field of practice.

VII. Standards for Recertification

No certificate of special competence shall be issued or renewed for a period

longer than five years, and the term of any certificate shall be stated on its face.

Each advisory commission may recommend, and the Board may establish additional requirements and safeguards to insure the continued proficiency of any holder of a certificate of special competence, but recertification shall be required at least every five years under the following minimum standards:

(a) A satisfactory showing, as determined by the Board with the advice of the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification was granted, during the period of certification,

(b) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such continuing educational experience in the field of law for which certification was granted, during the period of certification as the Board deems advisable, and

(c) The payment of any fee prescribed by the Board.

In the event a lawyer's previous certificate is not effective at the time application is made for recertification or he fails to meet the requirements for recertification, he shall be entitled to seek certification by examination as provided in Section VI above.

VIII. Revocation of Certification

A certificate of special competence may be revoked by the Board if the program for certification in that field is terminated or if it is determined after hearing on appropriate notice that:

(a) The certificate was issued contrary to the rules and regulations of the Board or the State Bar of Texas, or

(b) The certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board, or

(c) The certificate holder has failed to abide by all rules and regulations covering the program promulgated by the Board as amended from time to time including any requirement or safeguard for continued proficiency, or

(d) The certificate holder has failed to pay any fee established by the Board, or

(e) The certificate holder no longer

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meets the qualifications established by the Board.

IX. Right of Appeal

A lawyer who is refused certification, recertification or whose certificate is revoked by the Board, or any person who is aggrieved by a ruling or determination of the Board, shall have the right to appeal the ruling of the Board to the Board of Directors of the State Bar of Texas under such rules and regulations as it may prescribe. The exhaustion of this right of appeal shall be a condition precedent to judicial review.

X. Responsibilities of Certified Lawyers

When a client is referred to a lawyer who is certified under this program on a matter within the lawyer's specialty field, the lawyer so certified shall not take advantage of his position to enlarge the scope of his representation. In addition to any requirements of the Canons of Ethics, the lawyer so certified shall encourage a referred client to return to the referring lawyer for the handling of future legal needs.

XI. Financing the Program

A fee as established by the Board shall be charged for filing an application for certification or recertification. An additional fee may be established by the Board for the granting of the certificate, payable in annual installments or in other manner determined by the Board. Said fees shall be reasonable and in an amount as may be necessary to defray the expense of administering the program, and may be adjusted from time to time.

XII. Limited Pilot Program

The initial jurisdiction of the Board shall be limited to three fields of law:

.....,
and* and to the development and operation of a pilot program in the recognition and regulation of specialization in law, provided, however, that the number of fields included in

*These three fields will be selected by the Committee on Specialization Recognition after holding public hearings and prior to the submittal of this plan to the Board of Directors of the State Bar of Texas for final approval.

the program and the jurisdiction of the Board may be enlarged, altered or terminated from time to time by the Board of Directors of the State Bar of Texas.

(a) Special Controls for Pilot Program

1. Each participant in the pilot program, as a part of his application for participation in the program, shall agree to abide by all rules and regulations promulgated by the Board covering the pilot program as amended from time to time.

2. During the operation of the pilot program, no individual lawyer or group of lawyers shall have any vested rights thereunder.

(b) Rules of Professional Conduct

During the operation of this pilot program, any lawyer holding a current certificate of special competence shall be entitled to the following:

1. To state in recognized and conventional legal directories or law lists that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas including the Canons of Ethics.

2. To state in a notice to be circulated among lawyers only that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

3. To state in the classified section of telephone directories that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

4. To state on a professional card that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

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IN CHAMBERS WE LEARN

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Houston at 444 Houston First Savings Building.

George Payne and **William Cecil Reiff** have become associated with the Houston firm of **Garrett & Letbetter**, with offices in the Houston Club Building.

Glenn Vickery, formerly justice of the peace, has opened private offices for the general practice of law at 711 Fannin, Suite 1210, in Houston, and at 1722 Market Street in Baytown.

William B. Dazey, **Bohn E. Phillips** and **Robert Edwards Newey** have formed the firm of **Dazey, Phillips & Newey**. Offices are at 1401 C & I Building, Houston.

Rex Green has been appointed chief of the Lands Division for the Southern District of Texas, by **Anthony J. P. Farris**, U. S. Attorney for the Southern District of Texas.

South Texas

Guy D. Thompson resigned from Coastal States Gas Producing Company and has become associated with the Corpus Christi law firm of **Porter, Taylor & Gonzalez**. Offices for the firm are at 1800 Guaranty Bank Plaza.

South Central Texas

James E. Ingram has become associated with the San Antonio firm of **Green & Kaufman**. Offices are in the Alamo National Building. Mr. Ingram is a 1970 graduate of Baylor University Law School.

E. D. (Gene) Kincaid III, a graduate of the University of Texas Law School, has opened offices for the general practice of law in Uvalde. Offices are at 104 N. Getty St. A native of Uvalde, Mr. Kincaid has served as briefing attorney for the Texas Court of Criminal Appeals, as assistant city attorney in San Antonio and most recently as attorney for the Texas Water Rights Commission.

Central Texas

E. Eugene Palmer and **James M. Steed** have formed a partnership for the general practice of law in Austin, with offices at 1108 Nueces.

Bobby Reed, who was licensed to practice law in April, has held the office of county judge of Limestone County since Jan. 1, 1971. He is a graduate of Texas Tech and of Baylor Law School.

J. A. Dennis of Austin was speaker at a two-day church service held March 27-28 in Victoria. The Rev. Dennis is editor and publisher of the "Texas Herald" and a member of the State Bar of Texas.

H. Glenn Cortez has left the legal department of the City of Austin to go into private law

practice in Austin. His offices are at 400 First Federal Savings Building. He had been with the Austin legal department eight years, having served as assistant city attorney, first assistant city attorney and city attorney.

Phoebe Lester, a 1970 graduate of the University of Texas Law School, has become the second woman to be named an assistant to the district attorney in Austin. While in law school, she was a member of the board of governors and International Law Society, and since her graduation, has been a constitutional amendment clerk for the Texas Legislature.

Edwin N. Horne has opened offices for the general practice of law in Georgetown. A graduate of Baylor University Law School, Mr. Horne has practiced in Waco, where he was also a broker for Merrill, Lynch, Pierce, Fenner & Smith.

Tom H. Davis of Austin, representing the Texas Trial Lawyers Association, was speaker at a special insurance seminar sponsored by the Texas State Chiropractic Association, March 6 and 7 in Austin.

Warren L. (Rip) Collins has become first assistant to Travis County Attorney **Ned Granger**. He replaces **Wayne Meissner**, who resigned the position to enter private practice with the Austin firm of **Jones, Blakesley, Minton, Burton & Fitzgerald**. Mr. Collins is a 1967 graduate of the University of Texas Law School, where he participated in Moot Court. ■

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5. To display in his office the certificate issued by the Board. During the pilot program, no statement of certification shall be permitted on shingles, letterheads or otherwise than as above specifically described.

(c) Duration and Evaluation of Pilot Program

The pilot program shall be re-evaluated by the Board of Directors of the State Bar when appropriate, and in no event later than two years after its commencement to determine whether it should be continued, broadened, modified, terminated or whether some other action should be taken by the Board of Directors. If it is so terminated, a certificate holder shall surrender his certificate to the State Bar of Texas and all rights and benefits under the program shall cease and terminate.

XIII. Termination

This program in its entirety will terminate on January 1, 1978, unless further action to continue it is taken by the Board of Directors of the State Bar of Texas. ■

Specialization in the Law

Texas develops pilot plan for specialization in criminal law, labor law, family law

In January of 1969 the American Bar Association Special Committee on Specialization found that some degree of specialization is properly an existing necessity of modern law practice; that there is an ever-increasing pattern of specialization by practicing lawyers; and, that an increase in the number of lawyers who specialize in and of itself would improve the overall quality of services rendered by lawyers to their clients. The Committee concluded that the American Bar Association should provide guidance to states desiring to establish pilot plans for the regulation of specialization and should evaluate the results from those states before taking a final position. The recommendations of the Committee were adopted by the House of Delegates at the mid-winter meeting in January, 1969.

The State Bar of California has approved a pilot program in legal specialization and now has a Board of Legal Specialization functioning pursuant to that plan. California is starting its program with three fields: Taxation, Criminal Law, and Workman's Compensation. Public hearings were heard during September, 1972 in Los Angeles and San Francisco on tentative standards drafted by the advisory commissions for these three fields appointed by the Board. These standards have now been finalized and the California Board of Legal Specialization will be issuing certificates to specialists in these fields in 1973.

The State Bar of Texas has taken an active interest in specialization since July of 1969, when Josiah Wheat, President, appointed a special committee to advise the Bar on the advisability of specialization recognition. This Committee assembled materials from other states and the American Bar Association and studied the problems involved with specialization recognition. It unanimously concluded that the State Bar of Texas should proceed to regulate specialization rather than allow its development without adequate protection to the public and that the certification of specialists in certain defined fields would be beneficial to both the public and the Bar.

In April of 1970, the Board of Directors of the State Bar voted to continue the Committee and authorized the Committee to prepare a plan for the certification of specialists for submission to the Board. Presi-



WILLIAM J. DERRICK
El Paso

dent Morris Harrell reappointed the Committee in July of 1970.

In drafting the Plan, the Texas Committee considered the California Plan which had then been adopted, a proposed Wisconsin Plan, and suggestions and materials received from several other states as well as the ABA Committee. The final plan drafted and adopted by the Committee was presented to the Board of Directors of the State Bar in April of 1971 and was published in the Texas Bar Journal in May of 1970 soliciting comments from members of the Bar. It was submitted to the ABA Committee on Specialization in

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May of 1971 and was approved and endorsed by that Committee.

At its June 30, 1971 meeting in Dallas, the Board of Directors of the State Bar of Texas approved the Committee's plan for recognition and regulation of specialization subject to the determination of three specialty fields upon recommendation of the Committee. The full text of the approved plan follows this article.

The Special Committee on Advisability of Specialization Recognition was re-appointed in July of 1971 and given the task of selecting three fields for participation in the pilot program for the approval of the Board of Directors. The Committee conferred with several sections of the State Bar of Texas and other groups representing specialized fields of practice. After much deliberation, and with the concurrence of the sections involved, the Committee selected the fields of Criminal Law, Family Law, and Labor Law. The Committee's selections were unanimously approved by the Board of Directors of the State Bar at its meeting on April 21, 1972.

The Committee's primary consideration in selecting fields for the pilot program was that of public need. For example, the Committee was unanimous that the field of Criminal Law met this requirement more than any other because: (1) the client is most often unfamiliar with lawyers and how to find a good lawyer for his particular problem; (2) the client's problem is most often of an urgent nature requiring a quick selection of an attorney and fast and competent service by that attorney; (3) criminal law is recognized by most lawyers to be a definable specialty; and (4) the Committee felt that the number of cases involving inadequate representation in the field of criminal law probably exceeds the number of these cases in other fields of practice.

The following are some of the benefits to the public and the Bar which would result from the certification of lawyers with special competence in the criminal field:

- A. The certified criminal lawyer could state in the classified section of telephone directories that he is certified in that field giving the prospective client the opportunity to consider this in his selection of an attorney.
- B. The standards set by the Plan and the standards

WILLIAM J. DERRICK

William J. Derrick is chairman of the Board of Legal Specialization, established by the Texas Pilot Program for Legal Specialization. He was chairman of the Special Committee on Advisability of Specialization Recognition of the State Bar from 1968 until the committee completed its work in 1972. He also is a member of the American Bar Association Committee on Specialization.

Mr. Derrick practices law in El Paso, a member of the firm of Kemp, Smith, White, Duncan & Hammond. He is a law graduate (LL.B., 1958) of the University of Texas School of Law.

to be adopted by the Board for the field of criminal law in particular, would guarantee to the public that the lawyer holding himself out as a specialist in this field is in fact a specialist and possesses special competence in the field of criminal law.

C. The Plan would encourage lawyers desiring to practice in the field of criminal law to meet the requirements for certification thereby improving the overall quality of services rendered to the public.

D. The Plan would require lawyers holding certificates in the field of criminal law to meet certain requirements to insure their continued proficiency

Public Hearing On Specialization July 5

10 a.m. to 12 Noon; 1:30-4:30 p.m.

**Room A-277,
Outer Concourse West
Convention Center
Fort Worth**

Conducted by the Texas Board of Legal Specialization. Those wanting to appear at the hearing should write: William J. Derrick, P.O. Box 2800, El Paso 79999, setting forth a summary of the views to be expressed.

in the field such as attending a required number of CLE Institutes. This requirement would further increase the quality of services rendered to the public.

E. Certification of specialists would encourage law schools to place more emphasis on specialized legal education in preparation for certification after graduation thereby further increasing the quality of services to the public.

F. Certification could be used as a guide in appointing counsel in indigent cases, especially capital cases requiring expertise in the field.

The Plan is not limited to the three fields selected for the pilot program. It provides that the Board shall have jurisdiction to consider applications from interested groups for the recognition of additional fields as specialty fields under the Plan. If the Pilot Program proves successful, any number of fields could be added to the Plan. In adding a field, the Board would appoint an advisory commission from that field to draft the standards and prepare and administer examinations as will be done for the initial fields under the Pilot Program.

The members of the Texas Board of Legal Specialization, established by the Plan, were appointed by President Jim Bowmer in July of 1972. They are:

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William J. Derrick, El Paso, Chairman;
Phil Burleson, Dallas, Vice Chairman;
Franklin Jones, Jr., Marshall;
W. W. Fowlkes, San Antonio;
Cullen Smith, Waco;
William R. Edwards, Corpus Christi;
Gibson Gayle, Jr., Houston;
John Heard, Houston; and
Bob Burleson, Temple.

The Board of Legal Specialization met on September 22 and November 15, 1972, and has appointed its advisory commissions from the three fields. These are:

Criminal Law Advisory Commission to the Board of Legal Specialization:

Tom Hanna, Beaumont;
Harry Hudspeth, El Paso;
Vincent Perini, Dallas;
R. T. Scales, Dallas;
Thomas G. Sharpe, Brownsville;
Sam Robertson, Houston;
Randell Riley, Ft. Worth; and
Professor Walter Steele, Dallas.

Labor Law Advisory Commission to the Board of Legal Specialization:

John B. Abercrombie, Houston;
Frank S. Manitzas, San Antonio;
H. Nat Wells, Jr., Dallas;
Robert S. Breaux, Houston;
Robert A. Mebus, Dallas;
David Richards, Austin;
Tom Upchurch, Amarillo; and
Professor Jerre Williams, Austin.

Domestic Relations Advisory Commission to the Board of Legal Specialization:

Andrew Jefferson, Houston;
R. L. Whitehead, Sr., Longview;
Jack Johannes, Dallas;
Morgan Talbot, McAllen;
Kenneth B. Kramer, Wichita Falls;
Guy Carter, Dallas;
Douglas D. Hearne, Austin; and
Professor Eugene Smith, Lubbock.

The Board will meet with these advisory commissions in 1973, after which each commission will commence work on tentative standards for its field. The Board intends to hold a public hearing in conjunction with the State Bar convention in July, at which time interested lawyers will be invited to give their views on the Pilot Program and the tentative standards. The hearing will be on July 5 in Room A-277, Outer Concourse West, Convention Center, Fort Worth.

The Board encourages all interested persons to submit written comments to any member of the Board. If you do not know a member of the Board, you should direct your comments to either the Chairman or the Vice-Chairman whose addresses are as follows: William J. Derrick, Kemp, Smith, White, Duncan & Hammond, 2000 State National Plaza, El Paso, Texas 79901; and Phil Burleson, Abney, Burleson, Bondies, Conner & Mills, 3400 Republic National Bank Building, Dallas, Texas 75201.

Texas Plan for Recognition and Regulation of Specialization in the Law

I. Purpose and Objective

To promote the availability, accessibility and quality of the services of lawyers to the public in particular fields of the law is to serve the public interest and advance the standards of the legal profession. That is the purpose and objective of the following program for the recognition and regulation of those lawyers who have special competence in a particular field of the law.

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III. Jurisdiction of the Board

Subject to the continuing jurisdiction of the Board of Directors of the State Bar of Texas, the Board shall have general jurisdiction of all matters pertaining to specialization in the practice of law and shall have the authority and duty to:

(a) Administer the program for the recognition and regulation of specialization in the law.

(b) Upon appropriate petition, define and designate fields of law in which certificates of special competence may be granted and provide procedures by which such fields may be determined, redefined or eliminated.

(c) Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates of special competence to lawyers in defined and designated fields of law, after public hearings on due notice, have been held.

(d) Provide procedures for the investigation and testing of the qualifications of applicants and certificate holders and to award certificates of special competence in a form approved by the Board.

(e) Make and publish reasonable and nondiscriminatory standards for continuing proficiency, recertification or renewal of certificates of special

Phil Burluson, vice-chairman, and Walter Steele, member of the Texas Board of Legal Specialization, work on details of the Texas plan during recent meeting in Austin.



competence after public hearing on due notice.

(f) Encourage law schools, the State Bar Committee on Continuing Legal Education, local bar associations and other agencies of continuing legal education to develop and maintain a program of legal education and continuing legal education to meet the standards prescribed by the Board.

(g) Cooperate with other agencies of the State Bar of Texas in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of specialization in the law in the manner determined by the Board.

(h) Cooperate with the Special Committee on Specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization.

(i) Report as required, but at least annually, to the Board of Directors of the State Bar and to advise such Board concerning the appointment of advisory commissions.

(j) Make and publish standards, rules and regulations to implement this authority, all in accordance with the limitations on the power of the Board and the minimum standards prescribed by the Board.

IV. Limitations on Power of the Board

The following limitations on the power of the

Board are established:

(a) No standard shall be approved which shall in any way limit the right of a certificate holder to practice law in all fields. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is certified in a particular field or law.

(b) No lawyer shall be required to be certified before he can practice law in any particular field of the law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is not certified as a specialist in any particular field.

(c) All requirements for and all benefits to be derived from certification are individual and may not be fulfilled by or attributed to a law firm of which the specialist may be a member.

(d) Participation in the plan shall be on an entirely voluntary basis.

(e) The limit on the number of fields of law in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the Board.

(f) No rules or standards shall be adopted in

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contravention of the rules of the State Bar of Texas.

V. Advisory Commissions

Advisory commissions to the Board shall be established for each field of law in which certificates of special competence are to be issued. These commissions shall advise and assist the Board in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in law. Standards for the issuance of certificates of special competence shall be established by the Board, but it will be advised in this and other relevant matters by the advisory commission for each field of law. The advisory commission for each field of law shall be charged with actively administering the program in its particular field in cooperation with and under the general policy guidance of the Board.

Members of the advisory commission shall be appointed by the Board in such number and for such terms as the Board shall direct.

VI. Minimum Standards for Certification

The minimum standards for certification under this program are prescribed below. Each advisory commission may recommend, and the Board may establish, additional or higher standards.

A lawyer (1) who is an active member in good standing of the State Bar of Texas, and (2) who currently maintains an office in the State of Texas, and (3) who meets the requirements prescribed by the Board, shall be granted a certificate in a form approved by the Board which shall certify, under the name of the Board, the lawyer's special competence in a particular field of law designated by the Board as a field of law in which certificates of special competence may be granted.

(a) Requirements for qualifying for certification without examination are:

(i) A minimum of ten (10) years of actual practice of law on a full time basis.

(ii) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of special competence and substantial involvement in the particular field of

law for which certification is sought during a continuous five-year or other reasonable period (but not less than three years) immediately preceding certification.

(iii) Payment of any fees required by the Board.

Certification without examination may be granted only within a period of two years after the date on which the plan for certification of a particular field of law is made effective by the Board.

(b) Requirements for qualifying for certification by examination are:

(i) A minimum of five years of actual practice of the law on a full time basis.

(ii) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification is sought for such reasonable period of time immediately preceding certification as may be determined by the Board after advice from the appropriate advisory commission.

(iii) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such educational experience in the particular field of law for which certification is sought as the Board deems advisable.

(iv) Passing a written examination applied uniformly to all applicants before certification to demonstrate sufficient knowledge, proficiency, and experience in the field of law for which certification is sought and in the various fields of law relating to such field as is necessary to justify the representation of special competence to the legal profession and to the public.

(v) Passing an oral examination, if determined to be advisable by the Board, with the advice of the appropriate advisory commission.

(vi) Payment of any fee required by the Board. "Substantial involvement," as used in these standards shall be defined by the Board as to each particular field of law from a consideration of its

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complexity and distinction from other fields, and from consideration of the time and extent of necessary devotion to the particular field of practice.

VII. Standards for Recertification

No certificate of special competence shall be issued or renewed for a period longer than five years, and the term of any certificate shall be stated on its face.

Each advisory commission may recommend, and the Board may establish additional requirements and safeguards to insure the continued proficiency of any holder of a certificate of special competence, but recertification shall be required at least every five years under the following minimum standards:

(a) A satisfactory showing, as determined by the Board with the advice of the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification was granted, during the period of certification,

(b) A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such continuing educational experience in the field of law for which certification was granted, during the period of certification as the Board deems advisable, and

(c) The payment of any fee prescribed by the Board.

In the event a lawyer's previous certificate is not effective at the time application is made for recertification, or he fails to meet the requirements for recertification, he shall be entitled to seek certification by examination as provided in Section VI above.

VIII. Revocation of Certification

A certificate of special competence may be revoked by the Board if the program for certification in that field is terminated or if it is determined after hearing on appropriate notice that:

(a) The certificate was issued contrary to the rules and regulations of the Board or the State Bar of Texas, or

(b) The certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board, or

(c) The certificate holder has failed to abide by all rules and regulations covering the program promulgated by the Board as amended from time to time including any requirement or safeguard for continued proficiency, or

(d) The certificate holder has failed to pay any fee established by the Board, or

(e) The certificate holder no longer meets the qualifications established by the Board.

IX. Right of Appeal

A lawyer who is refused certification, recertification or whose certificate is revoked by the Board, or any person who is aggrieved by a ruling or determination of the Board, shall have the right to appeal the ruling of the Board to the Board of Directors of the State Bar of Texas under such rules and regulations as it may prescribe. The exhaustion of this right of appeal shall be a condition precedent to judicial review.

X. Responsibilities of Certified Lawyers

When a client is referred to a lawyer who is certified under this program on a matter within the lawyer's specialty field, the lawyer so certified shall not take advantage of his position to enlarge the scope of his representation. In addition to any requirements of the Canon of Ethics, the lawyer so certified shall encourage a referred client to return to the referring lawyer for the handling of future legal needs.

XI. Financing the Program

A fee as established by the Board shall be charged for filing an application for certification or recertification. An additional fee may be established by the Board for the granting of the certificate, payable in annual installments or in other manner determined by the Board. Said fees shall be reasonable and in an amount as may be necessary to defray the expense of administering the program, and may be adjusted from time to time.

XII. Limited Pilot Program

The initial jurisdiction of the Board shall be limited to three fields of law: Criminal Law, Labor Law, and Family Law* and to the development and operation of a pilot program in the recognition and regulation of specialization in law, provided, however, that the number of fields included in the program and the

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jurisdiction of the Board may be enlarged, altered or terminated from time to time by the Board of Directors of the State Bar of Texas.

(a) Special Controls for Pilot Program.

1. Each participant in the pilot program, as a part of his application for participation in the program, shall agree to abide by all rules and regulations promulgated by the Board covering the pilot program as amended from time to time.

2. During the operation of the pilot program, no individual lawyer or group of lawyers shall have any vested rights thereunder.

(b) Rules of Professional Conduct.

During the operation of this pilot program, any lawyer holding a current certificate of special competence shall be entitled to the following:

1. To state in recognized and conventional legal directories or law lists that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas including the Canons of Ethics.

2. To state in a notice to be circulated among lawyers only that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

3. To state in the classified section of telephone directories that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization." In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

4. To state on a professional card that he is certified by the Board in a particular field in the following words: "Certified Specialist [e.g., Admiralty law]—Texas Board of Legal Specialization."

In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

5. To display in his office the certificate issued by the Board.

During the pilot program, no statement of certification shall be permitted on shingles, letterheads or otherwise than as above specifically described.

(c) Duration and Evaluation of Pilot Program

The pilot program shall be reevaluated by the Board of Directors of the State Bar when appropriate, and in no event later than two years after its commencement to determine whether it should be continued, broadened, modified, terminated or whether some other action should be taken by the Board of Directors. If it is so terminated, a certificate holder shall surrender his certificate to the State Bar of Texas and all rights and benefits under the program shall cease and terminate.

XIII. Termination

This program in its entirety will terminate on January 1, 1978, unless further action to continue it is taken by the Board of Directors of the State Bar of Texas. ■

*These three fields were selected by the Committee on Specialization Recognition after holding public hearings and prior to the submittal of this plan to the Board of Directors of the State Bar of Texas for final approval.

Medical Malpractice

The HEW Secretary's Commission on Medical Malpractice released a report April 18 which contains many recommendations of interest, and perhaps concern, to attorneys who practice in that field.

For a copy ask for: DHEW Publication No. (OS) 73-88, which is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, stock no. 1700 00114.

One of the recommendations is the creation of a non-governmental, non-profit organization which would be the nationwide focal point for malpractice research, information, education and prevention activities.

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PRESIDENT'S PAGE

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LEGAL SPECIALIZATION An Experiment to Improve Delivery of Legal Services

Early this Fall the State Bar of Texas will be certifying specialists in three areas of the law: criminal law, family law and labor law. These lawyers so certified will be entitled to state their fields of certification in recognized legal directories or law lists, on notices circulated among lawyers, in the classified section of the telephone directories and on professional cards. The specialist will also be permitted to display in his office the Certificate issued by the Board of Legal Specialization.

These lawyers will be part of a controlled experiment in Texas to answer these questions: Has legal specialization become so much a fact of life in this State as to warrant its regulation? What is the best way to regulate legal specialization? Will such a program benefit the public and the bar? These questions have been studied and debated in our State Bar, in the American Bar Association and by the bars of many other states for years.

The American Bar Association began as early as 1954 to study the question and devise a detailed plan. At first the plan was ahead of its time and the Board of Governors decided that it was not feasible. A slightly modified plan was drawn up and debated from 1961 to 1963, before being discontinued when it became apparent that the bar either did not want specialization controlled, or was not prepared to accept regulation at that time. The Texas Plan for Recognition and Regulation of Specialization in the Law is a response to an American Bar Association study which began in 1969 when a Special Committee on Specialization reported that an increase in the number of lawyers who specialize, in and of itself, would improve the overall quality of the total services rendered by lawyers to their clients. Rather than develop a nationwide plan, the ABA Committee decided it would be best for individual states to develop local plans, which would serve as laboratories for studying the possibilities and implications of specialization.

The State Bar of Texas Board of Legal Specialization under the Chairmanship of William J. Derrick has, over a period of more than 5 years, tried to devise a plan which would fit into the ABA's goal. After much careful and thoughtful consideration, standards for certification have been drawn up for the three areas of the law. The selection of these areas was made with a view toward finding those which would be most representative of different types of practice and clientele and to have at least one area where another state is certifying specialists so as to compare programs. Until May 1, 1975, the Board of Legal Specialization is accepting and processing applications from qualified

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attorneys seeking certification in 1975. Written examinations will be administered this summer for 1975 certification.

The idea of legal specialization raises strong feelings both in and out of the Bar. Opponents say that it is monopolistic and is merely a device to increase attorneys' fees. Those with this view say it would benefit neither the legal profession nor the general public. Proponents say that it will help the uninformed public find competent counsel, maintain and improve proficiency in the specialty field and, indeed, reduce attorneys' fees since specialists should have no need to spend hours acquainting themselves with the law. Thus proponents foresee a great benefit to the public and the Bar.

Plans or studies of legal specialization are being undertaken in at least 37 states. The Texas plan has some features which are common to all of the plans. The plan is voluntary and spells out two important limitations: (1) no attorney is prohibited from practicing in any field by the fact that he is not a specialist in that field; (2) specialization in one field does not deprive an attorney of his right to practice in other fields in which he may not be specialized. Further, it makes provision for revocation by the Board of the recognition of specialization, with the right of appeal for the attorney. Finally, provision is made for the professional and ethical problems involved in widespread referral of clients by general practitioners to specialists. The Texas plan requires that the certified lawyer may not take advantage of his position to enlarge the scope of his representation. On the contrary, he is to encourage a referred client to return to the referring lawyer for the handling of legal needs.

Our pilot program will be in operation until January 1, 1978, at which time it will terminate unless further action to continue it is taken by the Board of Directors. In the meantime it will be studied and reevaluated continually by the directors and the Board of Legal Specialization and, it is hoped, all of the members of the Bar. The purpose of the program is to serve the public interest and advance the standards of the legal profession by promoting the availability and quality of the services of lawyers to the public. Between now and the end of 1977 we must study this program with a critical eye to see whether the program meets this objective. If it does not, then, of course, we will not want to continue it. As with every program of the State Bar of Texas, we must first be certain that the public is the primary beneficiary. We are optimistic and hopeful that the Texas Plan for Recognition and Regulation of Specialization in the Law, consonant with the purposes of the State Bar of Texas, will be a benefit to the citizens of our great state and their lawyers.

Results of YLS Survey On Specialization/Relicensing

By Mark A. Peterson

(This article is reprinted from the Fall, 1976 issue of the *Barrister*, a publication of the American Bar Association.)

Abstract

A survey of readers of *Barrister Magazine* shows substantial support among those young lawyers for programs to recognize legal specialties and programs for relicensing lawyers. Lawyers responding to the survey valued specialization both as a means for providing better legal services and as an attractive feature for lawyers. With regard to the structure of specialization programs, responding lawyers showed a strong preference for programs of certification rather than self-designation. Most responding lawyers would require attendance at continuing legal education courses and some form of screening process to determine which lawyers should be recognized as specialists. Most responding lawyers were willing to grant recognized specialists special opportunities to inform the public of their specialty status. Despite this general support for specialization programs, nonspecialists, new lawyers and lawyers practicing in small offices indicated concerns that specialization programs would adversely affect their own practice.

The questionnaire responses also showed strong support for relicensing programs. Most young lawyers responding to the survey felt that lawyers need to improve or refresh their substantive knowledge of the law and the professional skills used in legal practice. Responding lawyers also supported mandatory continuing education courses as an appropriate vehicle for improving the quality of legal practice.

The Young Lawyer's Section of the American Bar Association commissioned a survey to learn of young lawyers' opinions about legal specialization and relicensing of lawyers. A questionnaire dealing with issues raised by both of these programs was published in the Spring 1976 issue of the *Barrister Magazine*, a journal sent to all members of the Young Lawyer's Section. The magazine requested that readers provide their opinions by completing and returning the questionnaire. This article considers the results of that survey.

The survey produced a good response. 1485 completed questionnaires were returned and analyzed. Several dozen additional questionnaires were received

too late to be included in the analysis. In several respects the completed questionnaires provided a good cross section of lawyers. Responses were obtained from at least two lawyers in every state, with no state providing more than 10% of responses (California was the largest, with 9%). Responding lawyers also reported a range of practices: 55% report practicing in a firm, 17% are in solo practice, 12% in government work, 9% in corporate practice, 2% in public interest practices and 6% in other types of work. With regard to the type of practice, 35% reported that they do not specialize in any particular area. Of those who specialize, one-fourth engage in a civil litigation practice, one-eighth specialize in each of the areas of criminal law and taxes, one-tenth specialize in each of the areas of corporate-securities and real estate. The remaining one-third of specialists are divided among an additional 15 other areas of specialization. Finally, 63% of respondents report practicing in urban or sub-urban areas, with the remaining 37% practicing in smaller cities or rural areas.

Despite the diversity of responding lawyers, readers should not interpret the results as indicating opinions of all young lawyers or even all members of the Young Lawyers' Section. Obviously the results provide information about the opinions of lawyers responding to the survey. However, the results of any survey can be generalized to a larger group only if the survey respondents are randomly selected from that larger group. Members of the YLS are not a random sample of all young lawyers. Further, since it was up to each reader to determine whether or not she/he would return the survey, responding lawyers are not a random sample of all members of the YLS nor even of readers of the *Barrister*.

Even if the questionnaire results cannot be generalized to a larger group of lawyers, the opinions of responding lawyers are important in and of themselves. As members of the ABA, YLS members probably tend to be drawn from lawyers who are interested in matters of professional interest and who are interested in participating in the existing power structure of the profession. Furthermore, lawyers responding to the survey were perhaps more concerned with issues of legal specialization than those not responding. Thus, the survey results indicate opinions for an important

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group of lawyers: Young lawyers who tend to be actively involved in professional matters and who have at least some concern for the issues covered in the survey. They are an opinion group who might be expected to exert disproportionate influence on policy decisions involving legal specialization and relicensing.

Specialization

Value of Specialization

The survey results show a widespread appreciation of the values of specialization both as a means of improving the services provided by lawyers and also as a means for developing a satisfying practice. The first five survey questions considered how specialization affects the quality of services provided by a lawyer (Table 1). The overwhelming majority of responding lawyers agree that specialists have better knowledge, are more efficient and have better professional contacts. Only one of four respondents indicate a fear that specialized practice becomes too routinized (Question 2).

Questions dealing with responding lawyers' own practice also reflect a general appreciation of specialization. 71% of responding lawyers report that they are trying to develop a specialty (Question 73) and 65% of respondents already see themselves as specialists (Question 68). Finally, in evaluating other members of their firms, most respondents report that

specialists in their firm advise other members of the firm and that the specialists carry their own or more than their own weight (Question 70).

Although most responding lawyers see specialists as providing better services, respondents also indicate that the advantages of specialization are not always required. The vast majority of respondents would refer complex or serious cases to specialists (i.e., murder defendants, clients who wanted to challenge a technically complex will) (Question 5). However, where legal matters are relatively routine (i.e., drafting a will, simple assault defendant), most respondents would not automatically refer to a specialist. Apparently specialists' skills are not seen to be necessary for such routine cases.

The Form of Specialization Programs

The survey also examined opinions about how the organized bar should go about recognizing lawyers as specialists. Most respondents express a preference for programs in which the bar certifies that lawyers are skilled specialists rather than programs in which lawyers designate themselves as specialists (Question 16). Apparently most respondents do not regard self-designation as a sufficient basis for granting official recognition as a specialist. Indeed, most respondents express concern that such self-designation might be misleading (Question 13).

Presumably certification could assure the integrity of specialization programs. The organized bar would only grant privileges to lawyers who are determined to have specialty skills. Certification programs assume that the bar can actually determine who is skilled in a specialty area. In fact, most respondents agreed that it is possible to determine who is skilled (Question 15). However, despite this general optimism, there is no strong support for any one basis of determining specialty skills. Respondents split almost equally over requiring written tests, letters of recommendation or submission of work in the specialty area (Questions 11, 13 and 14). A slight majority favors written tests and submission of work. Finally, respondents again split over the utility of written tests. Fifty-three percent of respondents agree that written tests can meaningfully evaluate specialty skills in all or many areas, while 46% feel that tests are meaningful in few or no specialty areas (Question 12).

If a program of self-designation were adopted, respondents strongly agree that conditions should be placed upon such self-designation (Question 9). Clearly the most widely accepted condition for self-designation is the requirement that specialists take a specific number of hours of continuing education classes in the specialty area (Question 7). Responding lawyers would also restrict specialty designation to one or two areas (Question 8), but there is an even division of opinion about whether designated specialists should certify to spending most of his/her practice in the specialty area.

Privileges and Liabilities of Specialists

The survey results show that responding lawyers

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TABLE 1

Based on 1485 questionnaires

Questionnaire on Legal Specialization

Several states have or plan voluntary programs to certify lawyers as specialists in particular areas of law. Other states have made attendance at continuing education courses a requirement for a continuing license to practice law. Both of these programs are justified as attempts to assure the competency of lawyers, although the programs differ in many ways. Some lawyers have raised questions about both programs.

Even without specialization programs, many lawyers are already de facto specialists. How do the legal services provided by de facto specialists differ from those provided by non-specialists?

	Agree	Disagree	
1. Specialists can provide legal services more efficiently than non-specialists.	87 %	13 %	
2. Specialized practice tends to become like an assembly-line, with too little attention provided to clients.	25	75	
3. Specialists have better knowledge of their area than do non-specialists.	95	5	
4. Specialists have better professional contacts in their area of specialization.	88	12	
5. If you refer someone to another lawyer, to whom would you refer the following?			
	Specialist	Non-Specialist	Either
Someone who wanted a will drafted:	29	14	57
Someone accused of murder:	89	2	9
Someone accused of simple assault:	31	16	53
Someone who wanted to challenge a complex will:	78	3	19

Two types of programs have been proposed by the organized bar to encourage lawyers to specialize: (1) programs in which lawyers designate themselves as specialists, and (2) programs in which bar associations certify that lawyers have skills in a particular specialty area. In either case, lawyers recognized as specialists have a concomitant right to make their specialty known to the general public.

If the courts or bar of your state adopt a program in which lawyers designate themselves as specialists, what is your opinion about the following ways that have been proposed to carry out this self-designation:

	Yes	No
6. Designation should be permitted only if a lawyer certifies that he will spend most of his/her practice in the area of specialty.	50	50
7. Designation should be conditioned on taking a specific number of hours of continuing legal education classes in the specialty area.	70	30
8. Lawyers should be able to designate only one or two areas of specialty.	65	35
9. There should be no conditions on designation.	12	88
10. Self-designation might mislead the public.	70	30

If your state courts or bar adopt a program in which the bar association certifies that lawyers are skilled in particular areas, what is your opinion about the following bases for such certification?

	Yes	No
11. Certified specialists should take written tests to verify their knowledge and skill.	57	43
12. Written tests can meaningfully evaluate special skills and knowledge in:		
All areas 4 Many areas 49 Few areas 40 No areas 6		
13. Lawyers applying for specialization should furnish references from other lawyers.	49	51
14. Lawyers applying for certification should be required to submit examples of their work in the specialty area or to have their court or other public appearances observed.	54	46
15. Using methods outlined above, or other methods, it would be possible for the bar to determine who is or who is not skilled in a specialty.	72	28
16. If your state courts or bar want to encourage specialization, which would you favor:		
Self designation 26 Do nothing, let specialization develop on its own 15 Certification 59		

If specialists are recognized by the courts or organized bar, either through certification or self-designation, what special privileges and liabilities should apply to those specialists?

	Yes	No
17. May designate specialty in legal directories used by the profession.	99	1
18. May designate specialty on business cards.	92	8
19. May designate specialty on office sign.	77	23
20. May list specialty in public telephone directories.	88	12
21. May have a limited right to advertise their specialty in a dignified manner.	57	43
22. May freely advertise their specialty.	15	85
23. Should have no special privileges.	22	78
24. Should meet stricter malpractice standards than general practitioners in specialty area.	67	33
25. Should be subject to discipline or removal of specialty recognition for incompetent practice in specialty area.	93	7
26. Should be subject to no special liabilities.	15	85

What effects would you expect if recognized specialists were permitted limited rights to make their specialty known to the public, as by listing specialties in public telephone directories?

	Yes	No
27. Make it easier for specialists to get business.	88	12
28. Promote the interests of those who are already specialists.	84	16
29. Provide lawyers with newly developed specialties an opportunity to develop business.	90	10
30. Make it difficult for non-specialists to get business necessary to develop specialty skills.	62	38
31. Increase tendency toward "apprenticeships" during early practice.	89	11
32. Make it more difficult for new lawyers to start a practice.	54	46
33. Fragment the bar along lines of specialization.	60	40

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TABLE 1 (continued)

34. Make it easier for small firms and sole practitioners to compete with large firms.	49%	51%
35. Increase the ability of big firms to control law practice.	44	56

The proposal has been advanced that specialty status be used to limit areas of practice among lawyers.

	Yes	No
36. Should specialists be prevented from practicing outside their area of specialty?	9	91
37. Should non-specialists be prevented from practicing in a specialty area, unless the lawyer is preparing for recognition as a specialist?	8	92
38. Should practice before particular courts or boards be restricted to specialists?	16	84
39. Do you think that specialty recognition might be used by either courts or the organized bar to limit practice before certain courts or boards?	60	40

Both the attempts to develop specialty programs and proposals for relicensing lawyers grow out of concern for the competency of lawyers. From your experience, what do you think about the quality of law practice?

	Few	Some	Majority	Most	Nearly All
40. How many lawyers do you think are incompetent?	22	67	8	2	0.3
41. How many need to improve or refresh their knowledge?	2	30	35	19	13
42. How many need to improve their professional skills, e.g. drafting documents or pleadings, trial or appellate skills?	2	35	34	19	9
43. How many keep up to date with developments in their field?	6	32	38	20	4

If you have taken any continuing education, PLI, courses, etc., how many of these courses were:

	All	Many	Some	Few	None
44. A waste of time:	1	14	27	34	24
45. Useful in developing skills in a new area of practice:	6	28	39	20	7
46. Useful to generally familiarize you with an area:	17	46	28	8	1
47. Too general:	4	23	40	24	11
48. Too specialized:	0.5	5	24	39	32

How useful have the following been to you in developing the skills and knowledge you use as a lawyer?

	Very Useful	Of Some Use	Little Use
49. Professional organizations	17	45	38
50. Working with experienced lawyers	87	11	2
51. Learning by doing	95	5	0.3
52. Clinical programs or professional courses in law school	23	48	29
53. Continuing education courses	29	59	13
54. Regular law school courses	19	46	35

Proposals to license lawyers would require lawyers to attend a specified number of hours of continuing education courses to maintain the right to practice. What would be the effect of such mandatory programs?

	Agree	Disagree
55. Lawyers would sign up for, but not attend courses.	31	69
56. Courses in legal ethics would improve the ethical conduct of lawyers.	39	61
57. Attendance at some continuing education courses would help almost all lawyers.	88	12
58. Such programs would not screen out incompetent lawyers.	90	10
59. The requirement would assure that all lawyers have at least basic skills.	30	70
60. Even good courses are unnecessary; most lawyers keep up in legal developments.	13	87
61. The requirement would improve the quality of continuing education.	71	29
62. For most lawyers, continuing education courses would be a waste of time and money.	18	82
63. Participation in specialty bar organizations should satisfy class requirements.	41	59

To interpret the results of this questionnaire, we would like some information about you:

64. How old are you? _____		
65. How long have you been in practice? _____		
66. What is the nature of your practice? _____		
55 In a firm	12 In government work	9 Corporate counsel
17 In solo practice	2 Public interest	6 Other (specify) _____
67. How large is your firm (partners and associates)? _____		
68. Do you consider yourself to be a specialist?	Yes	No
In what area? _____	65	35
	(See List 1)	
69. Do you spend more than 40% of your practice in a single area?	73	27
In what area? _____	(See List 2)	
70. Are other members of your firm specialists?	74	26
Do they: Carry their own weight? 57%		
Carry more than their own weight? 29%		
	Advise others in the firm? 62%	
71. Would you take clients with problems for which you have had little experience or training?	Yes	No
72. Would you seek the advice of another lawyer if you took such a case?	49	51
73. Are you trying to develop a specialty?	99	1
74. Are you trying to move from one specialty to another?	71	29
75. Where did you go to law school?	13	87
76. In what state do you practice?	(See List 3)	
77. What kind of area?		
Large urban area 54	Small city 10	Moderately sized city 23
Suburban area 9	Rural area 5	

would grant special privileges to recognized specialists, but they would also impose special liabilities.

A substantial majority of respondents would permit specialists to show their specialty in legal directories, on business cards, on office signs and in public telephone directories (Questions 17-20). A small majority would even give recognized specialists a limited right to advertise (Question 21), but respondents overwhelmingly reject an unlimited right to advertise (Question 22). These responses apparently do not merely indicate a liberal position toward lawyers' advertising. Rather, 78% of respondents feel that specialists should be granted special privileges not accorded to the general bar (Question 23).

Respondents also strongly agree that recognized specialists should be subjected to special liabilities (Question 26). The overwhelming majority would sub-

ject specialists to discipline or removal of specialty designation for incompetence in the specialty area (Question 25) and most respondents would also subject recognized specialists to stricter malpractice standards in the specialty area (Question 24).

Effects of Specialization

There is general agreement among respondents with regard to several effects of specialization programs. The overwhelming majority of respondents agree that such programs will help both current and new specialists (Questions 27, 31, 29) and that such programs will increase tendencies toward apprenticeships during early practice (Question 31). Further, most respondents agree that specialization programs would make it more difficult for nonspecialists to develop specialty skills

| continued on next page

TABLE 2

Question		Over All Total	Specialty Status		Location	
			Spec	Non-Spec	Sub-Urb	Med-Rural
1. Specialists more efficient	Agree	87	92	79		
	Disag	13	8	21		
2. Specialty practice like an assembly-line	Agree	25	18	38		
	Disag	75	82	62		
3. Specialists better knowledge	Agree	95				
	Disag	5				
4. Specialists better professional contacts	Agree	88	91	83		
	Disag	12	9	17		
5. To whom would you refer someone who:						
	Wanted will drafted					
	Spec.	29	36	16	31	25
	Non-spec.	14	12	17	12	17
	Either	57	52	68	57	58
Accused of murder	Spec.	89	94	82		
	Non-spec.	2	1	3		
	Either	9	5	15		
Accused of simple assault	Spec.	31	38	19	36	24
	Non-spec.	16	15	18	14	20
	Either	53	47	63	51	56
Wanted to challenge complex will	Spec.	78	85	66		
	Non-spec.	3	2	5		
	Either	19	13	29		

TABLE 2 Results for questions dealing with benefits from specialization. Numbers indicate percent of respondents agreeing with each choice. First column indicates data summed over all respondents. Subsequent columns indicate questions for which there are statistically significant differences between (1) specialists and nonspecialists and (2) between lawyers practicing in urban-suburban areas and lawyers practicing in medium or small cities or rural areas.

Chi square tests were used to determine statistical significance.

Differences were regarded as significant if there was less than .05 probability that the difference occurred by chance.

(Question 30) and that such programs might fragment the bar along lines of specialization (Question 33). Respondents are almost evenly divided over whether specialization programs would hinder new lawyers (Question 32) and whether the programs would help big or small firms (Questions 34 and 35). Indeed, questions about these effects produced the sharpest differences between lawyers who are already specialists and those who are not.

Finally, responding lawyers overwhelmingly reject

use of specialty recognition to either limit areas in which lawyers can practice or else to restrict access to particular courts and boards (Questions 36, 37 and 38). Although most respondents agree that specialty recognition should not be used in this way, a majority of responding lawyers express concern that specialty recognition might be used by courts or the organized bar to restrict legal practice (Question 39).

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TABLE 3

Question		Over All Total	Specialty Status		Location		Length of Practice	
			Spec	Non-Spec	Sub-Urb	Med-Rural	0-3 Yrs	More Yrs
6. Designation only if most practice in specialty	Yes	50	54	41	52	46	45	54
	No	50	46	59	48	54	55	46
7. Designation conditioned on continuing education	Yes	70	67	75	66	75		
	No	30	33	25	34	25		
8. Designate only one or two areas	Yes	65	68	59				
	No	35	32	41				
9. No conditions on designation	Yes	12						
	No	88						
10. Self-designation might mislead	Yes	70	68	74				
	No	30	32	26				
11. Require written tests for certification	Yes	57						
	No	43						
12. Written tests are meaningful in how many areas?	All	4						
	Many	49						
	Few	40						
	None	6						
13. Require letters of reference for certification	Yes	49	52	44				
	No	51	48	56				
14. Require examples of work for certification	Yes	54						
	No	46						
15. Possible to determine who is skilled	Yes	72					69	74
	No	28					31	26
16. How encourage specialization?	Design.	26	28	22			28	24
	Do nothing	15	12	19			15	14
	Certif.	59	60	58			57	62

TABLE 3 Results for questions dealing with choice between designation and certification. Numbers indicate percent of respondents agreeing with each choice. First column indicates data summed over all respondents. Subsequent columns indicate questions for which there are statistically significant differences between (1) specialists and nonspecialists, (2) between lawyers practicing in urban-suburban areas and lawyers practicing in medium or small cities or rural areas and (3) between lawyers practicing for 3 years or less and those practicing for more than 3 years.

TABLE 4

Question		Over All Total	Specialty Status		Location		Length of Practice		Size of Office		
			Spec	Non-Spec	Sub-Urb	Med-Rural	0-3 Yrs	More Yrs	1-3	4-10	11+
27. Easier for specialists to get business	Yes	88									
	No	12									
28. Promote interests of present specialists	Yes	84							87	85	82
	No	16							13	15	18
29. Provide opportunities for new specialists	Yes	90									
	No	10									
30. Difficult for non-specialists to get business to develop special skills	Yes	62	57	70			66	59	68	60	57
	No	38	43	30			34	41	32	40	43
31. Increase apprenticeships	Yes	89									
	No	11									
32. More difficult for new lawyers to start	Yes	54	48	66	52	58	60	50	65	53	45
	No	46	52	34	48	42	40	50	35	47	55
33. Fragment bar along lines of specialization	Yes	60	56	66			62	57	66	57	54
	No	40	44	34			38	43	34	43	46
34. Easier for small firms to compete	Yes	49	57	34	52	43			41	47	57
	No	51	43	66	48	57			59	53	43
35. Increase control by big firms	Yes	44	36	60	40	50	49	40	55	45	32
	No	56	64	40	60	50	51	60	45	55	68
36. Specialist cannot practice outside specialty area	Yes	9									
	No	91									
37. Nonspecialist cannot practice in specialty area	Yes	8									
	No	92									
38. Should restrict courts/boards to-specialists	Yes	16	18	12			12	19			
	No	84	82	88			88	81			
39. Specialization will be used to restrict courts/boards	Yes	60									
	No	40									

TABLE 4 Results for questions dealing with effects of specialization programs. Numbers indicate percent of respondents agreeing with each choice. First column indicates data summed over all respondents. Subsequent columns indicate questions for which there are statistically significant differences (1) between specialists and nonspecialists, (2) between lawyers practicing in urban-suburban areas and lawyers practicing in medium or small cities or rural areas, (3) between lawyers practicing for 3 years or less and those practicing for more than 3 years and (4) for lawyers practicing in small (1 to 3 lawyers), medium (4 to 10 lawyers) or large offices (11 or more lawyers).

Relicensing

The last portion of the questionnaire dealt with various aspects of relicensing. Relicensing programs generally take the form of periodic examinations to determine if lawyers retain sufficient knowledge to continue practice. The threat of periodic reexaminations is generally regarded as an incentive to force lawyers to take continuing legal education courses. By taking a sufficient number of hours of such courses, lawyers can avoid the periodic reexaminations. In effect, relicensing programs attempt to increase the competency of lawyers by requiring attendance at continuing legal education courses.

The Need for Relicensing

The questionnaire examined the need for relicensing by obtaining respondents' opinions about the quality of legal practice. The results tend to support the need for relicensing programs.

Most responding lawyers indicate that the quality of legal practice is a matter of concern to them. Their main concern does not seem to be about the competency of lawyers. Respondents felt that only a minority of lawyers are incompetent (Question 40). However, respondents saw a widespread need for improvement among almost all lawyers. There was a general agreement that a majority of lawyers should improve their professional skills (Question 42) and their knowledge of the substantive law (Question 41) and that lawyers should keep up to date with developments in their field (Question 43).

The Utility of Continuing Legal Education

The questionnaire then considered whether the quality of legal practice might be improved by requiring attendance at continuing education courses. Respondents' answers suggest that continuing legal education may be a useful remedy.

First, respondents expressed generally high regard for continuing education courses. Respondents indicated that most courses which they had taken were not a waste of time (Question 44). Respondents did not find such courses to be too specialized (Question 48), although there was a concern that some courses were too general (Question 47). Some of the courses were useful in developing new areas of practice (Question 45). Respondents indicated that the greatest utility of such courses was as a means to gain general familiarity with an area of law (Question 46).

Continuing education seemed to fare quite well when compared with other means of developing legal skills and knowledge. Actual experience in practicing law and the opportunity to work with other lawyers were regarded by the respondents to be by far the best means to learn how to practice (Questions 50 and 51). After these, continuing education courses were regarded as most useful (Question 53). Relatively few respondents found continuing education to be of little use. As a means for learning how to practice law, clinical programs in law school, regular law school

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courses and professional organizations were all rated with greater disfavor than favor (Questions 51, 52 and 54).

Effects of Mandatory Continuing Legal Education

Finally, the questionnaire asked about likely effects of requiring attendance at continuing legal education courses. The results quite strongly support the utility of mandatory continuing education. An overwhelming majority of respondents indicated that continuing education courses would help almost all lawyers (Question 57). Very few respondents felt that such courses are unnecessary (Question 60) or a waste of time and money (Question 62). Few respondents were concerned that lawyers would sign up for, but not attend such courses (Question 55). As a side effect, most respondents felt that a mandatory program would improve the quality of continuing education (Question 61). However, respondents do see limits to the utility of such courses. Most feel that such courses could neither screen out incompetent lawyers (Question 58), assure that all lawyers have basic skills (Question 59) nor improve ethical conduct (Question 56).

Differences Among Lawyers

Finally, the survey provided an opportunity to examine differences between important subgroups of lawyers. I examined whether there were differences about specialization issues between specialists and nonspecialists, between lawyers practicing in urban-suburban areas and non-urban lawyers, between lawyers who have been practicing for longer or shorter periods of time and between lawyers practicing in large, medium or small firms.

Not surprisingly, differences occurred most fre-

quently between de facto specialists and nonspecialists. In most cases, these differences were not so great that the majority of specialists differed from the majority of nonspecialists. For example, for all but one of the first five questions specialists valued specialization more highly. However, most nonspecialists also saw benefits from specialization (Table 2).

Both specialists and nonspecialists preferred certification programs to self-designation programs, but there were some differences about how specialization programs might be structured (Table 3). These differences seem to reflect the different interests between de facto specialists and nonspecialists. More specialists would limit designation to one or two areas; they would require specialists to certify to spending most time in the specialty area and they would require letters of recommendation from other lawyers. In contrast, nonspecialists more strongly support continuing education courses as a basis for designation.

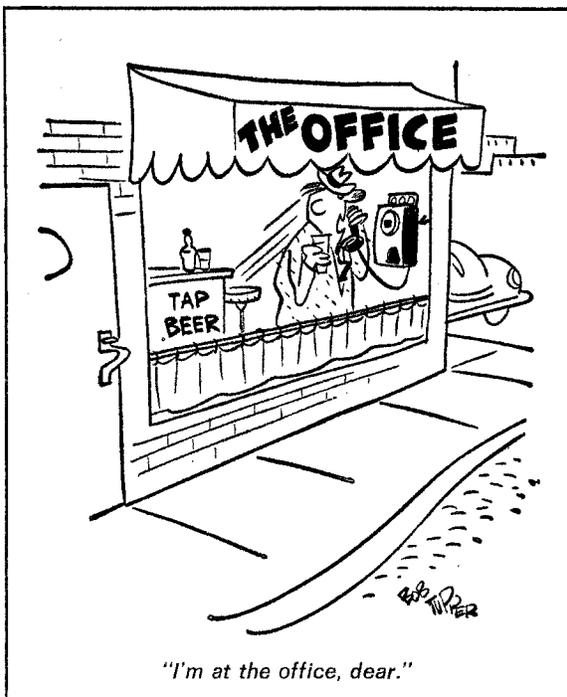
The greatest difference between specialists and nonspecialists occurred for questions dealing with the effects of specialization programs. The majority of specialists and the majority of nonspecialists disagreed about effects upon new lawyers, big firms and small firms. The majority of nonspecialists indicated that specialization programs would harm new lawyers and small firms, but would benefit big firms (Table 4). For each of these questions, the majority of specialists disagreed.

The latter three questions also produced differences for each of the other comparison groups. Thus, non-urban lawyers, lawyers recently admitted to practice and members of small firms all saw specialization programs as harmful to new lawyers and as benefitting big firms (Table 4).

Summary

Respondents to the YLS survey quite strongly endorsed both the need for and the utility of mandatory relicensing programs. Their responses also indicate a general appreciation for the value of specialized legal practice. Responses suggest reasonable support for programs to promote specialization. If adequate methods for evaluating specialty skill can be developed, most lawyers responding to the questionnaire would seem to prefer a program of specialty certification. A program of self-designation would seem to gain support only if designated specialists were required to attend continuing legal education courses in the area of specialty. Respondents seemed generally willing to grant recognized specialists privileges in order to encourage specialization. However, programs to encourage specialization raise concerns among nonspecialists, non-urban lawyers, new lawyers and lawyers in small offices. Conceivably these concerns could develop into active opposition to specialization programs. ■

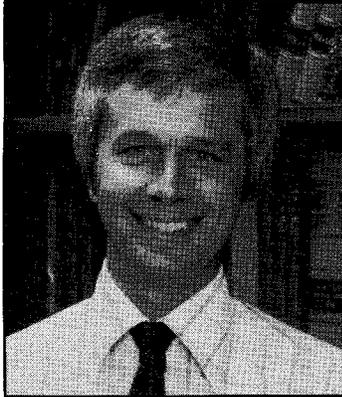
California has a rule requiring suspended attorneys to pass an examination on the Code of Professional Responsibility before they may be reinstated.



State Bar Activities

Legal Specialization:

Gary McNeil Is Named Director



Gary McNeil

Gary W. McNeil became executive director of the Texas Board of Legal Specialization on Sept. 1. He replaced John Roberts, who resigned to pursue business interests.

McNeil obtained his bachelor's degree from Baylor University in 1970 and his J.D. from the University of Texas School of Law in 1973.

He served as assistant general counsel for the State Bar from 1974 to 1980. McNeil entered private practice and later was enforcement

coordinator for the Texas State Board of Public Accountancy. He rejoined the State Bar staff in the Institutes and Courses Division of the Professional Development Program. He served the division for two years as assistant director and for one year as associate director.

McNeil is married to Cathy Munson McNeil, a free-lance artist.

Lynn Scott, formerly administrative assistant for the Texas Board of Legal Specialization, was named associate director.

Summer Institute:

Law and the Humanities

Twenty-four teachers from across Texas attended the "Law and the Humanities" summer institute, sponsored by the State Bar of Texas and Law Focused Education.

The rigorous two-week program exposed participants to constitutional theories and practices that may be easily infused into middle and high school American History and government classes.

During the morning sessions, the teachers studied academic scholarly issues. Afternoons were spent in demonstrations of practical strategies to teach legal and historical concepts.

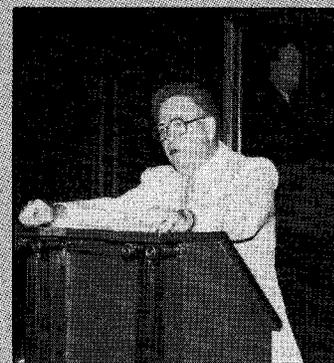
Teachers also discussed legal themes in literary works and were given an opportunity to "ride-along" with Austin police officers.

They were given a tour of the Texas Department of Corrections and the Federal Minimum Security Prison in Bastrop.

Participants will pilot the lessons in their departments this fall and instruct other teachers in their districts about teaching similar programs.

Barbara Sexton, a participant in the seminar, commended the program, saying, "It (the program) was a thoroughly quality endeavor and one that will enhance my teaching and hopefully the teaching of others in my district for many years to come." Sexton said that the institute helped her be more enthusiastic about teaching her classes.

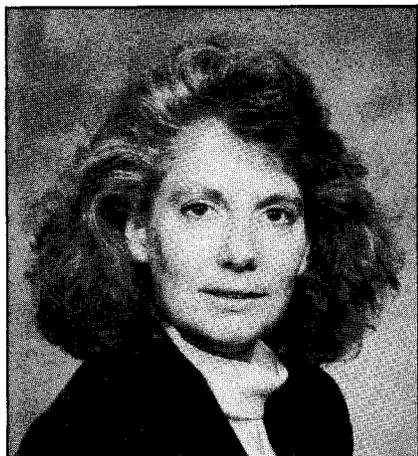
"It (the program) helps to remind us that we can be conduits of great



Supreme Court Justice William Kilgarlin spoke at a luncheon during the Law and Humanities Institute.

ideas and that our presence in the classroom can certainly have a lasting impact."

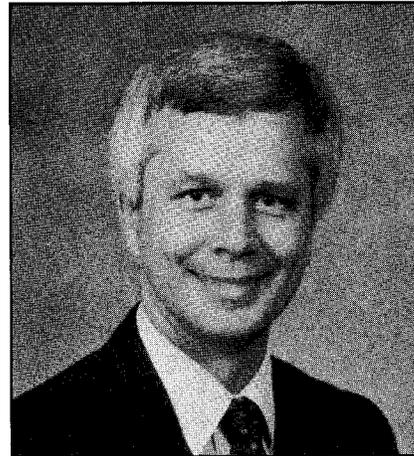
Bar Staff Members Head National Organizations



Patricia Moran



Patricia Williford



Gary McNeil

Three members of the State Bar of Texas staff were elected to head bar related national organizations.

Patricia Moran, executive director of the Texas Equal Access to Justice Foundation was elected president of the National Association of IOLTA (Interest on Lawyers Trust Accounts) Programs. Texas is a charter member of the organization which was created in 1986 as a network of the 49 IOLTA programs in the United States.

NAIP meets twice a year to discuss challenges and current issues affecting all IOLTA programs. It also works cooperatively with the American Bar Association IOLTA Commission which serves as a clearinghouse of information on IOLTA nationwide.

Some topics addressed by NAIP include bank relations, grant management, recruitment of law firms to the program, and investment of funds.

The Texas IOLTA program was created by order of the Texas Supreme Court in December 1984. Moran, who has an MBA from Louisiana State University, was hired as executive director in January 1985. Since that time, the foundation has provided \$1.5 million in two grant cycles for legal services to low-income Texans in civil matters.

Texas is one of 30 states with voluntary IOLTA programs. Ten states have comprehensive programs and nine have opt-out programs.

For information about the Texas IOLTA program, contact Moran at 1/800/252-3401 or 512/463-1444.

Patricia Williford, director of the Texas Minimum Continuing Legal Education (MCLE) program, was elected president of the Association of Minimum

Continuing Legal Education Administrators (AMCLEA). The organization consists of all directors of MCLE programs in the United States and representatives from states interested in instituting a mandatory continuing legal education requirement.

The organization which has been in existence for about five years was formalized in February 1987. Its initial purpose was for MCLE directors to share problems, compare solutions, and discuss record keeping procedures.

Goals this year, according to Williford, include developing a national cooperative accreditation program of CLE providers.

"This procedure will make it easier for the provider, lawyer, and administrator," said Williford.

Also on the agenda is an effort to create a more standard sponsors accreditation form and more uniform MCLE rules from state to state. The organization works closely with the ABA Committee that produced Model Rules for MCLE.

MCLE was approved in Texas by referendum in November 1985. Williford, who earned a BBA from the University of Texas, was hired in 1986. The first reporting of the MCLE requirement by Texas attorneys was in June 1987. In Texas, lawyers are required to earn 15 hours of CLE per year. Ten of those hours must be participatory, including one hour of ethics. Five hours may be self study.

Texas is one of 32 states with MCLE requirements. Eight states are considering instituting the requirement.

For information about MCLE, contact Williford at 512/463-1382.

Gary McNeil, executive director of the Texas Board of Legal Specialization, was elected president of the Association of Legal Specialization Executives which was formed in Toronto, Canada during the ABA Summer Meeting.

The primary purpose of the organization is to provide an opportunity for administrators to exchange information about specialization programs and operations, and to discuss problems and issues faced by all their programs. It will also offer assistance to states considering instituting specialization programs.

The association will work closely with the ABA Standing Committee on Specialization. Currently, only 13 states have specialization programs.

In Texas, the Board of Legal Specialization began offering certification programs in 1975. The Board recognizes attorneys in various areas of law, who because of experience, training, and examination are awarded certificates of special competence. Approximately 3,500 Texas attorneys have achieved board certification. Areas of specialization include: civil appellate; civil trial; consumer bankruptcy; criminal; estate planning and probate; family; immigration and nationality; labor; oil, gas and mineral; personal injury trial; real estate; and tax.

McNeil earned a J.D. at the University of Texas School of Law and has worked for the Bar 12 years, serving in the general counsel's office, professional development program, and Texas Board of Legal Specialization.

For more information about the requirements for certification contact McNeil at 512/463-1454.

Texas Plan for Recognition And Regulation of Voluntary Specialty Certification for Legal Assistants in Texas

An Opportunity For Professional Growth

Purpose and Objective

The purpose and objective of the following voluntary specialization program is to recognize and promote the availability, quality, and utilization of the services of legal assistants who, working under the supervision of duly licensed attorneys, have achieved a level of special knowledge in particular fields of law, and, further, to assist attorneys in their dedication to serving the public interest and advancing the standards of the legal profession.

Legal Assistant Specialization Advisory Commission

The Joint Task Force on Specialty Certification for Legal Assistants of the Standing Committee on Legal Assistants ("standing committee") and the Legal Assistants Division ("LAD") hereby establishes a Legal Assistants Specialization Advisory Commission ("commission"). The chair of the standing committee shall also serve as chair of the commission and shall appoint commission members, giving consideration to the recommendations of the LAD board for appointment of legal assistants. The commission shall be composed of 13 members, including the chair. The appointments shall be confirmed by the Texas Board of Legal Specialization ("TBLS").

The commission shall be representative of specialization by legal assistants in Texas, and shall initially pertain to three specific fields of law. Commission members shall be assigned to each specialty field as becomes necessary. For example, groups of four shall be established as follows: (a) two licensed attorneys, and (b) one educator and one legal assistant, or two legal assistants. Initially, each group of four will serve as the examination committee for one of the specialty fields. Members shall be appointed to staggered terms of office, and until their successors are appointed, the initial appointees shall serve as follows: four members shall serve until the June 30 next following their appointments; four members shall serve until the second June 30 following their appointments; and four members shall serve until the third June 30 following their appointments. Any vacancy shall be filled in the manner provided for original appointments. All commission members shall be eligible for reappointment for no more than one additional three-year term.

Jurisdiction of the Commission

Subject to the continuing jurisdiction of the standing committee and TBLS, which shall approve all rules and regulations proposed by the commission, the commission shall have general jurisdiction of matters relating to voluntary specialization by legal assistants, working under the supervision of a licensed attorney, set forth in

the minimum standards for certification section, and shall have the authority and duty to:

- A. Administer the program for the recognition and regulation of voluntary specialization for legal assistants.
- B. Upon appropriate petition, recommend to the standing committee that additional fields of law be defined and designated in which certificates of special competence may be granted, and may recommend procedures to be provided by which new or existing fields may be determined, redefined or eliminated, all of which to be consistent with the standards and policies of the TBLS.
- C. Make and publish reasonable and nondiscriminatory standards, rules, and regulations concerning education, experience, proficiency, and other relevant matters upon the basis of which legal assistants may seek certificates evidencing special competence in defined and designated fields of law.
- D. Establish procedures for the investigation and testing of applicants' and certificate holders' qualifications and award certificates of special competence in a form approved by the standing committee and TBLS, and consistent with standards established by the TBLS.
- E. Make and publish reasonable and nondiscriminatory standards for continuing proficiency, recertification, or renewal of certificates of special competence.
- F. Encourage legal assistant programs, the LAD, legal assistant associations in Texas, and other continuing education programs to develop and maintain programs designed to comport with the standards adopted for voluntary specialty certification of legal assistants.
- G. Cooperate with the LAD, standing committee, and TBLS in establishing and enforcing standards of professional conduct to the extent necessary for the recognition and regulation of voluntary specialty certification of legal assistants in Texas.
- H. Report as required, but at least annually, to the standing committee and TBLS, and advise and consult with both about the appointment of examination committees.

Limitations on Commission Power

The following limitations on the power of the commission are established:

- A. No standards shall be approved which shall limit the right of a legal assistant to work under the supervision of a duly licensed attorney in all fields of law. Any legal assistant shall have the right to work in all fields of law, even though not certified in a particular field of law.

- B. No legal assistant shall be required to be certified in any field before being allowed to work under the supervision of a duly licensed attorney. Any legal assistant shall have the right to work under the supervision of a duly licensed attorney in all fields of law, even though the legal assistant is not certified as a specialist in any particular field.
- C. All requirements and benefits from certification are individual and may not be fulfilled by or attributed to either the attorney under whose supervision the legal assistant is working nor to a law firm by whom such legal assistant may be employed.
- D. Participation in the plan shall be on an entirely voluntary basis.
- E. The limit on the number of fields of law in which a legal assistant may be certified shall be determined by such practical limits as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the commission.
- F. No rules or standards shall be adopted without prior approval by the TBLS or in contravention of the rules of the State Bar of Texas.

Examination Committees

Examination committees shall be established for each field of law in which certificates of special competence are to be issued. These committees shall advise and assist the commission in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization for legal assistants.

Standards for the issuance of certificates of special competence shall be established by the commission, but it will be advised in this and other relevant matters by the examination committee for each field of law. Each committee shall be charged with actively administering the program in its particular field in cooperation with and under the general policy guidance of the commission and TBLS.

Minimum Standards for Certification

The minimum standards for certification under this program are prescribed below. Each examination committee may recommend, and the commission may establish, additional or higher standards.

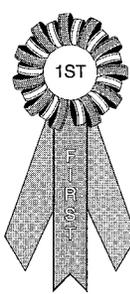
NOTE: Specific standards in the initial fields of Family Law, Civil Trial Law, and Personal Injury Trial Law include higher requirements in some categories than are listed below. For a list of requirements, please contact the Texas Board of Legal Specialization at 1/800/204-2222 or 512/463-1463, ext. 1454.

Requirements for qualifying for certification include:

1. Must be employed in Texas as a legal assistant working under the direct supervision of an attorney duly licensed and doing business in Texas;
2. Must have a minimum of five years of actual experience as a

legal assistant;¹

3. Must have a minimum of three years of actual experience in the particular area for which the legal assistant applies for specialty certification;²
4. Must have, in addition to the above, at least one of the following:
 - a. Successful completion of the NALA (National Association of Legal Assistants) certification examination; or
 - b. A baccalaureate or higher degree in any field; or
 - c. Successful completion of either (1) an ABA-approved program of education and training for legal assistants; (2) a legal assistant program that consists of a minimum of 60 semester credit hours (or equivalent quarter hours) of which at least 18 hours are in substantive legal courses; (3) a legal assistant program that consists of at least 18 semester credit hours of substantive legal courses, plus at least 45 semester credit hours (or equivalent quarter hours) of general college curriculum courses; or (4) two additional years of actual experience working as a legal assistant under the supervision of a licensed attorney, for a total of seven years of actual experience;
5. Must have completed a minimum of 18 hours of approved continuing legal education in the specialty area in the three years immediately preceding application;³
6. Must successfully pass the written examination prescribed by the commission, and applied uniformly to all applicants before certification to demonstrate sufficient knowledge, proficiency, and experience in the field of law for which certification is sought; or
7. Must pass an oral examination, if determined to be advisable by the commission, with the advice of the appropriate examination committee; and
8. Must submit at least two written recommendations which must be from: (a) The legal assistant's present attorney supervisor, or an attorney supervisor who has supervised the legal assistant's work product for a period of at least one year during the immediate past five years prior to application; and (b) a judge, nonattorney professional, or some supervising attorney with whom the applicant has had special contact work in the particular specialty area during past five years prior to application.⁴ In addition to the names of references supplied by applicants, the commission may, at its option, send statement of reference forms to other attorneys and/or judges;
9. Must submit a written statement demonstrating substantial involvement in the specialty of application, evidencing the following:⁵ (a) that the applicant has devoted a minimum of 25 percent of their legal assistant functions to the specialty of application during the three years immediately preceding such application; and (b) that the applicant has acquired experience and expertise in the specialty area by showing a level



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of utilization necessary to justify the representation of special competence;

10. Must pay such fees as may be required by the commission; and
11. No person currently under an attorney disciplinary sanction which prohibits that person from practicing law shall be eligible to apply for specialty certification under this plan.

Standards for Recertification

No certificate of special competence shall be issued or renewed for a period longer than five years, and the term of any certificate shall be stated on its face.

Each examination committee may recommend, and the commission may establish, additional requirements and safeguards to ensure the continued proficiency of any holder of a certificate of special competence but recertification shall be required at least every five years under the following minimum standards:

The certified legal assistant must comply with the minimum standards for certification as set forth above as well as (1) a satisfactory showing, as determined by the commission, of substantial involvement in the particular field of law for which certification was granted, during the period of certification; (2) a satisfactory showing, as determined by the commission, of a substantial involvement in the particular field of law for which certification was granted, during the period of certification; (3) pay any fee prescribed by the board. In the event a legal assistant's previous certificate is not in effect at the time application is made for recertification, or the legal assistant fails to meet the requirements for recertification, such legal assistant shall be entitled to seek certification by examination as provided in the minimum standards for certification section above; (4) continue to be employed and work under the direct supervision of a Texas-licensed attorney;

Revocation of Certification

A certificate of special competence may be revoked by the commission if the program for certification in that field is terminated, or if it is determined, after hearing before the commission on appropriate notice that:

- A. The certificate was issued contrary to the rules and regulations of the commission and/or TBLS; or
- B. The certificate was issued to a legal assistant not eligible to receive a certificate, or who made any false representation or misstatement of material fact to the commission; or
- C. The certificate holder has failed to abide by all rules and regulations covering the program promulgated by the commission as amended from time to time including any requirement or safeguard for continued proficiency; or
- D. The certificate holder has failed to pay any fees established by the commission; or
- E. The certificate holder no longer meets the qualifications established by the commission; or
- F. The certificate holder has previously engaged in the unauthorized practice of the law.

Upon revocation of the certificate, the certificate holder shall immediately return the certificate to the office of the executive director of the TBLS.

Right of Appeal

A legal assistant who is refused certification, recertification, or whose certificate is revoked by the commission, or any person who is aggrieved by a ruling or determination of the commission, shall have the right to appeal the ruling of the commission to the standing committee under such rules and regulations as the standing committee may prescribe. The exhaustion of this right of appeal shall be a condition precedent to judicial review.

Responsibilities of Certified Legal Assistants

- A. **Special Controls for the Program:** (1) Each participant in the program, as a part of the application for participation, shall agree to abide by all rules and regulations promulgated by the commission and TBLS, as amended from time to time, and (2) during the operation of the program, no individual legal assistant or group of legal assistants shall have any vested rights thereunder.
- B. **Rules of Professional Conduct:** During the operation of this program, any legal assistant holding a current certificate of special competence shall be entitled (1) to state in recognized and conventional mediums, including legal directories, legal assistant lists, letterhead, or on a professional card that the legal assistant is certified by the TBLS in a particular field in the following words: "Board Certified Legal Assistant — (e.g., Family Law) — Texas Board of Legal Specialization" (hereafter known as "the designation"). (2) The use of the designation in mass media or other promotional material, including television and radio advertising, newspaper advertising, and yellow page advertising is prohibited. The designation may not be used in any printed materials intended for advertising to the general public and/or prospective clients of the firm or a particular attorney. (3) In all respects, any publication of the designation shall conform to the rules of the commission and TBLS, including the Texas Disciplinary Rules of Professional Conduct. No statement of certification shall be permitted other than as above specifically described unless permitted by the rules of the State Bar of Texas, TBLS, or commission.

Examination

Upon approval of the application, the specialty examination must be taken at the next available offering and successfully completed in order to receive the specialization designation. If the examinee does not successfully complete the examination, it may be re-taken at a subsequent test offering; however, application must be made for each examination.

Program Financing

In order to defray expenses of administering the program, the commission, with concurrence of the TBLS, may establish reasonable application, examination, and annual fees. These fees may be changed, as necessary, from time to time.

Retained Jurisdiction of the Commission

The commission's jurisdiction shall be limited to three fields of law: family law, civil trial law, and personal injury trial law, and to the development and operation of the program in the recognition and regulations of specialization in the law. However, the number and type of fields included in the program may be enlarged or altered from time to time by the commission after consultation with, and concurrence of, the TBLS.

1. A legal assistant may have worked two of these five years outside of Texas.
2. The three years of experience in the specialty area must have taken place in Texas, and must have occurred during the three years immediately preceding application for specialty certification.
3. Such approval shall be determined by the commission and approved by the TBLS.
4. Applicants who are unable to submit the names of references as described above shall submit the names of references as are considered acceptable to the commission.
5. Substantial involvement as used in these standards, shall be defined by the commission as to each particular field of law from a consideration of its complexity and distinction from other fields, and from consideration of the time and extent of experience necessary to the particular field of specialty.

Legal Technician Examiners consisting of seven members to be appointed by the governor. Four members of the board would be legal technicians, one would be an attorney, and two would be members of the public. The board would determine the qualifications of applicants for certification as legal technicians, develop the examination to certify legal technicians, develop a professional code of conduct for legal technicians, and define the scope of practice of a certified legal technician. The practice areas would include family law, transfers of title or any interest in real property, bankruptcy, wills and trust, probate, incorporation, real estate, consumer law, immigration, litigation support for pro se parties to a proceeding, public benefits law, and housing law. The bill died in committee.

South Dakota — Senate Bill 13 was introduced to the state legislature to provide regulation of a profession or occupation. The bill defines "registration," "certification," and "licensing." The proposal provided that any profession or occupation applying for regulation under the act shall furnish a proposal containing considerations for a regulatory board, qualifications of practitioners, disciplinary procedures that would be applied to practitioners, proposed requirements for continuing education, and draft legislation for the applicant profession or occupation.

Texas — Two companion bills to license legal technicians were introduced into the state legislature. The bills would have allowed legal technicians to provide information and standardized legal publications to the public, assist consumers in using legal reference materials and law libraries, instruct consumers on the proper manner to appear pro se before a court, and accompany a consumer to informal mediation proceedings. To qualify for a license the legal technician would have to be 21 years of age, have completed two years of college, and not be a disbarred attorney nor a convicted felon. The bill also provided for mandatory continuing legal education and a model code of ethics. The bills died at the end of the legislative session.

Utah — A proposed pilot program allowing "law trained" legal assistants to help mediate divorce actions was introduced in the state senate, but was later rejected for lack of financing. The proposed program would have cut expenses in divorce proceedings and could have involved mediation or another process to facilitate speedy, nonadversarial, inexpensive settlement of property, custody, and visitation issues in divorce matters.

Washington — Court facilitators, who are nonlawyers, provide assistance to pro se litigants in seven counties in the state. The Washington State Bar Association Domestic Relations Task Force recommended facilitators be available at public expense to help pro se litigants obtain the correct legal forms; explain how to file, serve, notice, and confirm motions; and calculate simple child support.

The one-year program, modeled after an Arizona program, is a collaborative undertaking by three federally-funded civil legal services programs. When the program was instituted, the coordinator received resumes from lawyers and nonlawyers. Nonlawyers, several of whom are paralegals, were selected as courthouse facilitators.

On the international front, the Law Society of British Columbia in Canada has undertaken a study on the regulating of paralegals. To date, the law society has conducted a survey and issued an initial report containing information about what legal assistants currently do in British Columbia to determine whether legal assistants should be regulated, and if so, how.

Pamela Young is the legal administrator of Bank One, Texas N.A. Legal Division in Dallas. She is chair of the Regulation and Career Paths Subcommittee of the State Bar of Texas Standing Committee on Legal Assistants.

Deanna Shimko-Herman is a legal assistant with the law firm of Reinhart, Boerner, Van Deuren, Norris & Rieselbach in Milwaukee, WI. She is vice president of policy for the National Federation of Paralegal Associations.

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Why does your firm use legal assistants?

Dunn: We use legal assistants to maximize firm efficiency. If you can use a legal assistant to perform a function that can be supervised by an attorney, but not actually performed by that attorney, an attorney's time is saved and the ultimate cost of our legal services can be lowered without sacrifice of quality.

What steps does your law firm take to ensure legal assistants do not engage in the unauthorized practice of law or otherwise subject the law firm to disciplinary action?

Dunn: The steps we must take are close supervision, strict and specific assignments, and frequent consultation. However, the great majority of legal assistants seem to have little, if any, problems with the limitations placed on them. They are usually very reluctant to over-step their role.

Fisher: We are careful to explain to our staff the professional code and ethics by which lawyers are bound. Our legal assistants and secretaries are trained they simply cannot dispense legal advice, and to decline to offer it to clients and potential clients, even if the legal assistant has been taught the law in a particular area. When they must pass along messages from the attorneys, because of the attorneys' schedule, they are trained to explain carefully to the client, "I am not a lawyer and cannot give legal advice, but Mr. Fisher is in court today and asked me to tell you.... When Mr. Fisher gets out of trial, he will talk to you about this in more detail and will explain it to you."

Even on matters such as limitations, where the legal assistant receives a "cold call" from a potential client, and no lawyer is immediately available, our legal assistants are careful to explain they are not attorneys and cannot dispense advice, but that there are filing deadlines in Texas that are critical. The legal assistant then seeks the first available lawyer to call the potential client back the same day.

Some attorneys express a concern that if a client has to talk to a legal assistant, as opposed to an attorney, the client feels slighted. What is the reaction of your clients to working with a legal assistant?

Robertson: I find just the reverse. The clients would prefer to talk to the legal assistant because clients understand the legal assistant's hourly rates are much lower; if the legal assistant is not capable of helping them with a particular problem then they know the legal assistant will come and ask me. In fact, I find it is only a problem with some attorneys. Some attorneys refuse to talk to my legal assistants, but I have no problem whatsoever with my clients.

Fisher: For example, I had a new client come in today over the noon hour. The legal assistant who will be working with that client sat in on the discussions I had with the client, went to lunch with us as we continued to discuss the case and then, based on my instructions, continued the meeting to gather all the necessary background information. She and the client will thus have formed a personal relationship before the sun sets on the first day of our representation. I have explained to the client that I try a number of cases, am often out of the office taking depositions, and that he or she will be able to get a lot of information from the legal assistant. However, I also explain I can always be reached if it is absolutely essential. The clients seem to appreciate the fact they can talk to someone who is readily accessible.

Dunn: When the utilization of legal assistants first began, there was a tendency on the part of many clients to distrust the work product. However, as more and more firms begin to employ legal assistants, clients began to see the real utility of the legal assistant concept. I have never heard of a client that felt slighted when a legal assistant is used as long as the attorney is available to interact with the client. Most cases, attorneys and legal assistants now meet together with clients to discuss the direction of litigation, strategy, and tactics.

How does the use of legal assistants affect your firm economically?

Fisher: I can't quantify it and say we produce revenues of "x" percent more than we otherwise would have. But, I am certain our success or our ability to produce revenue for the firm is, in large part, because of the good legal assistants we have.

Dunn: Proper use of a legal assistant often avoids the necessity for hiring another attorney thus avoiding a large increase in overhead for the firm.

How can a small law firm or a sole practitioner benefit from using a legal assistant?

Fisher: I believe that any law firm can benefit from the services of a legal assistant. As I discussed earlier, a legal assistant can help the lawyer be more efficient by preparing drafts of discovery, organizing and tracking voluminous documents, and keeping the clients informed. These tasks can be performed by a good legal assistant and allows the lawyer to spend more time on those matters which require lawyer skills. I would think the legal assistant is even more critical to the small law firm which does not have a constant influx of new associate lawyers who could accomplish these tasks.

Robertson: The legal assistant can take things off lawyers' shoulders and allow them to be more productive in things which require attorney time. You need to think of a legal assistant as an investment, not an expense.

Jeff Work is a litigation attorney with the Houston law firm of Oppenheim & Associates. He graduated from Baylor University School of Law in 1988 and is a member of the Standing Committee on Legal Assistants.

The author would like to thank the three attorneys who were interviewed for this article. By giving freely of their time, they have each once again proven their dedication to the State Bar of Texas.

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State Bar Divisions: An Asset to the Legal Profession

By Karen Johnson



Legal Assistants, Legal Administrators, Law Students — Each of these groups play a significant role in the State Bar of Texas, a role that is probably not known by most lawyers in the state.

Legal administrators and legal assistants have become integral parts of legal services delivery teams. Lawyers have come to depend on these professionals for support and assistance. Law students are the lawyers of tomorrow and most lawyers are concerned not only about the quality of individuals in law school but the number that will be added to the roll of licensed attorneys.

The State Bar of Texas has long recognized the potential of these three groups and has allowed them to form divisions, which operate similar to State Bar sections except that they are primarily comprised of nonlawyers. Currently, there are about 912 law students, 306 legal administrators, and 2,007 legal assistants who participate in their respective divisions. These individuals have made a commitment to the legal profession and the State Bar of Texas. They are interested in the administration of justice and the future of the law in Texas. They contribute freely of their time and energy not only for personal development but for the advancement of the legal system in Texas.

The Law Student Division was created in 1979. Its goal is to enhance law students' participation in the administration of justice, professional responsibility, and public service in cooperation with the Texas Young Lawyers Association and the State Bar of Texas. In reality, the division which is run by law students works to further professionalism of law students, to encourage them to participate in pro bono programs, and to develop the ethical and professional behavior expected of those who have the privilege of practicing law.

The division's projects include CLE events, writing contests, and mentoring programs.

The Legal Administrators Division

was formed in 1987 to advance the practice of legal administration; to increase the professionalism of those managing each component of the legal services delivery team; to educate legal administrators at all levels in all aspects of legal practice management; and to educate the entire legal profession about the value and availability of legal administrators. That sounds like a lot — and it is. Legal administrators are often responsible for the day to day functioning of a law firm. The division provides an avenue for administrators throughout the state to network and exchange ideas about the best possible ways of administering programs. The division has helped the State Bar to develop better ways for attorneys to pay annual dues and file MCLE annual compliance reports. Administrators oftentimes are the professionals responsible for keeping track of the administrative responsibilities of lawyers and firms. They play an invaluable role in the profession and within their private firms.

Like legal administrators, legal assistants have devoted much time to educating the legal profession about their chosen

profession and the benefits a lawyer or law firm can garner through the utilization of nonlawyer legal professionals. The Legal Assistants Division was created in 1981 and strives to enhance legal assistants' participation in the administration of justice, professional responsibility, and public service in cooperation with the State Bar of Texas.

The Legal Assistants Division and the State Bar Standing Committee on Legal Assistants have done much to further the role and reputation of the legal assistant within the legal community. The division sponsors continuing legal education courses at the State Bar annual meeting. A task force was formed that has created guidelines whereby legal assistants can receive specialty certification — in 1994 specialty certification will be available in family law, personal injury law, and civil trial law.

As lawyers we can appreciate the role that other professionals play in our pursuit of success within our chosen field. It is important to recognize that these groups of professionals also have an interest in the future of the legal profession. They are interested in ethics; they are watching to see how the legal profession addresses the needs of the poor; and they play a vital role in how lawyers are perceived by clients.

The State Bar Board of Directors considered the pros and cons of creating divisions made up of nonlawyer professionals. It reached the conclusion that the professions involved were so interrelated with the law profession that these divisions could be allies to the State Bar and the lawyers of Texas. Through cooperative efforts by lawyers, legal assistants, and legal administrators the legal system will continue to develop in ways that will best serve the public and the administration of justice.

If you would like more information about these divisions or have a comment or suggestion about the State Bar of Texas, please do not hesitate to call me at 1/800/204-2222 or 512/463-1463.

The mission of the staff of the State Bar of Texas is to serve our diverse membership and the public in a fiscally and socially responsible manner by enhancing the quality, integrity, and understanding of and access to the legal system.

PROFESSIONALISM AND LEGAL SPECIALIZATION

BY GARY McNEIL

Although 1969 is probably better remembered for Woodstock or Neil Armstrong's walk on the moon, it was also the year the State Bar of Texas began studying the idea of recognizing legal specialization. Five years later, the Supreme Court of Texas created the Texas Board of Legal Specialization (TBLS), initiating voluntary attorney certification. The first "class" in 1975 offered certification in criminal, labor, or family law. TBLS now certifies attorneys in 17 specialty areas. (It also certifies paralegals in six specialty areas.)

The purpose of the program has not wavered since its inception — to provide consumers with information about attorneys who practice in specific areas of law and to enhance the quality of attorney services in those areas. To that end, the Court has approved standards for certification under which an applicant must demonstrate experience in the specialty area, submit to peer review, attend CLE, and pass a six-hour written exam.

Once certified, an attorney must continue to practice and fulfill CLE in the specialty area and to submit to peer review every five years.

Certified attorneys had to meet CLE requirements eight years before minimum continuing legal education requirements were established for all Texas attorneys. Certification also pre-dated the creation of the College of the State Bar of Texas — a voluntary program to recognize attorneys who attend approximately 27 hours of CLE a year for three consecutive years.

This issue of the *Texas Bar Journal* is dedicated to professionalism. The term *professionalism* can be difficult to define. Some subscribe to the "You know it when you see it" test. I believe that some people come close to providing a definition without ever using the word. During the ceremony to recognize newly licensed attorneys and paralegals in February 2009, Texas Supreme Court Chief Justice Wallace Jefferson said: You have made a commitment to excellence. You committed to meeting the requirements, submitting an application for certification, and studying for and passing an examination. But your commitment does not end there. You have made an ongoing commitment to continue working and acquiring knowledge in your specialty area and, beyond that, to serve the justice system in our state to benefit not just the courts but all individuals and institutions in our society.



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The Texas Board of Legal Specialization appreciates the many attorneys who have gone the extra mile to obtain board certification. It was not the easiest thing to do, but you did it anyway. Your local newspaper probably did not have a banner headline about your becoming certified, but you did it anyway. Your accomplishment may not be universally recognized, but you did it anyway. I believe that is the essence of professionalism — striving to become better because you choose to and, by doing so, lighting the path for others.

is executive director of the Texas Board of Legal Specialization.