



**CAN A NATIONAL CREDENTIALING ORGANIZATION  
BE SUED IN ALL 50 STATES?**

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Can a certificant always sue a certification organization in the state in which the certificant resides? The answer is no. A recent United States District Court decision makes it clear that a certification organization is not necessarily subject to the jurisdiction of the courts of every state in which their certificants are located.

In Bredberg v. Soil Science Society of America, 2011 U.S. Dist. LEXIS 6306, the United States District Court for the Western District of Washington dismissed a case against the Soil Science Society of America (“SSSA”) involving an ethics violation for lack of personal jurisdiction. The court held that, for several reasons, the exercise of jurisdiction over SSSA would be unreasonable.

SSSA is a non-stock corporation, incorporated and located in Wisconsin. SSSA is a membership organization, but it also has a regulatory body, the American Society of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS). ARCPACS certifies people as Certified Soil Scientists and Certified Professional Soil Classifiers. ARCPACS has a Code of Ethics that requires a certificant to bring an ethics complaint when he/she has “positive knowledge of a deviation from the Code by another Registrant.”

In March 28, 2009, A.J. Bredberg filed an ethics complaint against another certified professional claiming that she had violated the Code by incorrectly determining soil conditions on a property located in Oregon. The respondent filed a counterclaim against Bredberg, claiming Bredberg had lied and distorted facts in his complaint. SSSA conducted an investigation, and cleared the respondent of any wrongdoing. However, SSSA determined that Bredberg had violated its Code of Ethics. Bredberg lost his appeal to the SSSA Board of Directors. He brought an action against SSSA in the District Court for the Western District of Washington, where he lived.

Bredberg alleged several contractual and tort claims against SSSA. SSSA moved to dismiss the case for lack of personal jurisdiction.

SSSA is not qualified to do business in Washington and does not have a registered agent for service of process in Washington. None of its board members resides in Washington. It does have 138 members and 59 certificants that reside in Washington.

The District Court held that it did not have general jurisdiction over SSSA, because SSSA was doing neither “substantial” nor “continuous and systematic” business in Washington. The court also considered whether it had specific jurisdiction over SSSA. The Ninth Circuit has a three-

part test to determine if a court has specific jurisdiction over an entity. First, the defendant must have purposely availed itself of the privilege of conducting business in the forum; second, the plaintiff's claim must arise out of that activity; and third, the exercise of jurisdiction must be reasonable. The court ruled in favor of Bredberg on the first two parts of this test because Bredberg had an ongoing contractual relationship with SSSA which required him to report ethical violations to SSSA. However, Bredberg failed to demonstrate that the exercise of the jurisdiction was reasonable.

The District Court found that there was a lack of personal jurisdiction, based on the following facts:

- (1) SSSA had no officers, agents, or employees in Washington, and the greater majority of files and witnesses related to the matter resided in Wisconsin;
- (2) permitting an action in Washington would deny Wisconsin of its ability to regulate businesses incorporated and doing business in Wisconsin;
- (3) SSSA is a nonprofit organization whose financial bottom line would be significantly impacted if it was required to litigate in Washington;
- (4) the action could be more effectively litigated in Wisconsin; and
- (5) Bredberg did not establish that he would not be precluded from suing SSSA in other jurisdictions.

The District Court therefore dismissed the case.

The District Court's decision was based on the specific facts of the case. The lawsuit revolved around the ethical violations of the respondent, which occurred in Oregon, not Washington. If the ethical violations had occurred in Washington, there might have been a different outcome to this case. However, this case provides general guidelines to credentialing organizations and other associations who have contractual agreements with their membership. The outcome of the case is important because the court concluded that the mere fact that an individual resides in a particular state does not, in and of itself, mean that the state has jurisdiction over the non-profit entity simply based upon the existence of a "contractual" relationship between the parties resulting from the issuance of a credential. Simply put, personal jurisdiction requires more than the issuance of a credential.