

AGENDA ITEM

MAY 135

Legal Specialization Accreditation of the
National Board of Trial Advocacy's
Certification Program in Social Security
Disability Law

DATE: April 11, 2007

TO: Members of the Board of Governors
Board Committee on Member Oversight

FROM: Myron S. Greenberg, Chair, Board of Legal Specialization

SUBJECT: National Board of Trial Advocacy's (NBTA) Certification Program in Social Security Disability Law - Proposed Legal Specialization Accreditation

ATTACHMENT: Attachment 1: Rules Governing Accreditation of Specialty Certification Programs for Attorneys

EXECUTIVE SUMMARY

The Board of Legal Specialization (BLS) requests that the Board Committee on Member Oversight recommend that the Board of Governors accredit the National Board of Trial Advocacy (NBTA)/National Board of Legal Specialty Certification (NBLSC) certification program in Social Security Disability Law.

California Rule of Professional Conduct 1-400(D)(6) prohibits a member from advertising as a "certified specialist" unless the member holds a current certificate as a specialist issued by either the BLS or another entity accredited by the State Bar to designate specialists. The State Bar Rules Governing Accreditation of Specialty Certification Programs for Attorneys (Rules) set forth the minimum criteria for State Bar accreditation of certifying entities.

The NBTA/NBLSC certification program in social security disability law is accredited by the American Bar Association (ABA). Under the Rules, consideration of a program already accredited by the ABA focuses on whether the requirement of a California component to the task and experience requirement and to the written examination has been satisfied. A review was conducted by an Accreditation Evaluation Subcommittee appointed by the Board Committee on Operations, which included discussion with representatives of the applicant. The Subcommittee has recommended approval of the applicant's program and the BLS concurs in that recommendation. Board members with questions on this item may contact Phyllis Culp at (415) 538-2118 or phyllis.culp@calbar.ca.gov.

BACKGROUND

Certification as a legal specialist implies official recognition by an objective entity of a higher degree of competence in a specified field of practice. Certifying entities establish standards of competence, experience and knowledge to ensure that the standards are meaningful and reliable. Certifying entities may be programs created by a state supreme court or organizations established to further specialty certification in a specific field of practice.

In 1997, the Supreme Court adopted California Rule of Professional Conduct 1-400(D)(6), which prohibits a member from advertising as a “certified specialist” unless the member holds a current certificate as a specialist issued by either the BLS or another entity accredited by the State Bar to designate specialists.¹ The Rules (attached) set forth the minimum criteria for State Bar accreditation of certifying entities. Under the Rules, the Board Committee shall take action within 30 days after receipt of the written recommendation of the BLS.

At present, there are 11 certification programs that have been accredited by the State Bar: the National Board of Trial Advocacy’s programs in civil trial advocacy, criminal trial advocacy, and family law trial advocacy; the American Board of Certification’s programs in business bankruptcy law, consumer bankruptcy law, and creditors’ rights law; the National Elder Law Foundation’s program in elder law; the American Board of Professional Liability Attorneys’ programs in accounting malpractice, legal malpractice and medical malpractice; and the National Association of Counsel for Children’s program in juvenile law (child welfare).

DISCUSSION

Evaluation Process

The evaluation process begins with a review by an Accreditation Evaluation Subcommittee specially appointed² for each field of law seeking specialty certification. The Subcommittee reviews the application to determine whether or not it meets the accreditation criteria and makes its recommendation of approval or denial to the BLS, which, in turn, makes a recommendation to the Board Committee.³ The action taken by the Board Committee is then presented to the Board of Governors.

¹In 1990, the United States Supreme Court handed down its decision in Peel v. Attorney Registration and Disciplinary Commission of Illinois (1990) 496 U.S. 91 [110 S.Ct. 2281]. Under Peel, state disciplinary rules may not bar truthful statements by attorneys that they are certified specialists by bona fide certifying organizations. However, the Court also indicated that states may regulate the use of such statements by creating uniform standards that must be met by entities offering certification. The policy is to protect the public from potentially misleading statements, particularly in situations where a certifying organization might maintain low standards in order to attract sufficient applicants to the program.

²Appointments to the Accreditation Evaluation Subcommittee were made on an ad hoc basis by the Board Committee on Operations and included appointment of the BLS chair as subcommittee chair and persons knowledgeable in the relevant specialty field of law (see section 9.0 of the Rules).

³Board Committee action is required under section 12.0 of the Rules.

The National Board of Trial Advocacy/National Board of Legal Specialty Certification

The NBTA/NBLSC has applied for accreditation of its specialty certification program in social security disability law. Founded in 1977, the NBTA is a non-profit certifying organization with approximately 2400 members certified in civil, criminal, and family law trial advocacy (those certification programs have previously been accredited by the State Bar) and social security disability law. In 2005, the NBTA created the NBLSC as an organization that would allow it to certify in non-trial practice areas such as social security disability law.

In order to receive accreditation, the NBTA/NBLSC had to demonstrate sufficient financial and organizational resources to implement and maintain its certification program, and show that its standards for certification and recertification require applicants to meet minimum experience and education criteria, pass a written exam, and be favorably evaluated by their peers. The NBTA/NBLSC's certification program is accredited by the ABA. Under our Rules, review of a program already accredited by the ABA may be limited to a determination of whether the requirement of a California component to the task and experience requirement and to the written exam has been satisfied.

The application submitted by the NBTA/NBLSC was reviewed by the Accreditation Evaluation Subcommittee, which decided to recommend accreditation for the NBTA/NBLSC'S program in social security disability law. The BLS has approved the Subcommittee's recommendation.

FISCAL AND PERSONNEL IMPACT

There is no fiscal and personnel impact on the general fund. The Legal Specialization Program is a special fund program that pays all of its direct and indirect (interfunded) costs with fees collected from applicants, certified specialists, education providers, and accredited entities.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

PROPOSED RESOLUTIONS

Should the Board Committee on Member Oversight concur with the recommendation of the BLS to accredit the NBTA/NBLSC's certification program in social security disability law, it would be appropriate to adopt the following resolution:

RESOLVED that the Board Committee on Member Oversight recommends that the Board of Governors hereby approves the accreditation of the National Board of Trial Advocacy/National Board of Legal Specialty Certification's certification program in social security disability law.

Should the Board concur with the Board Committee's recommendations, it would be appropriate to adopt the following resolution:

RESOLVED, upon recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby approves the accreditation of the National Board of Trial Advocacy/National Board of Legal Specialty Certification's certification program in social security disability law.