

AGENDA ITEM

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Proposed Standards for Certification and Recertification in Admiralty and Maritime Law – Request for Public Comment

DATE: April 11, 2007

TO: Members of the Board Committee on Member Oversight

FROM: Myron S. Greenberg, Chair, Board of Legal Specialization
Phyllis J. Culp, Director, Office of Special Admissions and Specialization

SUBJECT: Proposed Standards for Certification and Recertification in Admiralty and Maritime Law – Request for Public Comment

ATTACHMENT: Attachment 1: Proposed Standards for Certification and Recertification in Admiralty and Maritime Law

EXECUTIVE SUMMARY

The Board of Legal Specialization (BLS) requests that the Board Committee authorize publication of proposed Standards for Certification and Recertification in Admiralty and Maritime Law (Standards), as set forth in the attachment to this memorandum, for a 90-day public comment period.

The BLS, which administers the Legal Specialization program, is charged with proposing additional fields of law in which attorneys may be certified. One purpose of the program is to help the public identify attorneys who are proficient in a particular area of law by providing a method of certification based on objective criteria. Another is to encourage attorney competence by providing attorneys with the means of obtaining a professional credential that recognizes their proficiency. Certification also serves to regulate claims of special skills by attorneys to assure that such claims are not made in a manner that misleads the public. The program is completely self-funded.

The BLS decided to consider a certification program in Admiralty and Maritime Law after being approached by a practitioner in that area. Information that she and other practitioners provided indicates that admiralty and maritime law is a highly specialized field. For example, the Federal Rules of Civil Procedure have supplemental “lettered” rules that apply only to admiralty and maritime cases. Those rules also have a section that provides for a special “tender” procedure whereby a party can be “tendered,” i.e. brought into a lawsuit, as a direct defendant and must answer the plaintiff’s complaint. This procedure is only available in admiralty and maritime cases.

Another example is a major cruise line that has selected Los Angeles as the exclusive forum within which it may be sued, resulting in tens of thousands of passengers traveling on that line that have to come to California courts in the event of an injury. Such claims are governed by maritime law and practitioners in this area believe that certification would provide a way for consumers to locate competent counsel.

At the request of the BLS, the Board of Governors created a consulting group to examine the feasibility of, and develop standards for, certifying legal specialists in the area of admiralty and maritime law. The Consulting Group recommends that the BLS go forward with the proposed specialty and has developed the attached Standards to be circulated for public comment.

Board members with questions on this item may contact Phyllis Culp at (415) 538-2118 or phyllis.culp@calbar.ca.gov.

BACKGROUND

The Supreme Court of California first approved the Legal Specialization program in 1972 as a pilot attorney certification program to identify for the public attorneys who have demonstrated their experience and proficiency in specific areas of law, and to encourage attorney competence. The program was made permanent by the Supreme Court in 1985 and currently certifies approximately 4200 attorneys, including approximately 150 who are on judicial service, in nine specialty areas: Appellate Law; Bankruptcy Law; Criminal Law; Estate Planning, Trust and Probate Law; Family Law; Franchise and Distribution Law; Immigration and Nationality Law; Taxation Law; and Workers' Compensation Law.

To be certified as a specialist, an attorney must pass a written examination, demonstrate experience based on performance of a variety of activities related to the specialty area, complete continuing education in the specialty area, and be favorably evaluated by other attorneys and judges familiar with the attorney's work.

DISCUSSION

Ms. Marva Jo Wyatt, a practitioner in admiralty and maritime law and adjunct member of the faculties of both Loyola Law School and the University of San Francisco Law School where she teaches admiralty and maritime law classes, contacted the BLS with the request that it consider certification in that specialty field.

Ms. Wyatt's letter noted that admiralty and maritime law is a highly specialized field. She states:

For example, the Federal Rules of Civil Procedure have supplemental "'lettered" rules that apply only to admiralty and maritime cases, see F.R.C.P. Rules A-F, and Federal Rule of Civil Procedure 14(c) provides for a special "tender" procedure whereby a party can be "tendered," i.e. brought into a lawsuit, as a direct defendant and must answer the plaintiff's complaint. This procedure is only available in admiralty and maritime cases.

She also pointed to the example of a major cruise line that has selected Los Angeles as the exclusive forum within which it may be sued, resulting in tens of thousands of passengers traveling on that line that have to come to California courts in the event of an injury. Such claims are governed by maritime

law and Ms. Wyatt believes that certification would provide a way for consumers to locate competent counsel.

After attending a meeting of her local maritime bar, Ms. Wyatt followed up her initial request with a list of over 70 attorneys who authorized her to include their names as supporters of certification in their specialty area.

The Admiralty and Maritime Law Consulting Group is composed of prominent practitioners in the field who met a number of times in all day sessions, during which they developed the attached Standards that we are now requesting be published for public comment. The Consulting Group is recommending that the BLS go forward with the proposed specialty in Admiralty and Maritime Law.

FISCAL AND PERSONNEL IMPACT

There is no fiscal and personnel impact on the general fund. The Legal Specialization Program is a restricted fund program that pays all its direct and indirect (interfunded) costs.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee determine to adopt the recommendation of the BLS, it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Member Oversight directs the publication of proposed Standards for Certification and Recertification in Admiralty and Maritime Law, in the form attached to these minutes and made a part hereof, for a 90-day comment period; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation by the Board Committee.