

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA

180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639
TELEPHONE: (415) 538-2120

MOC III-G



DATE: April 15, 2008

TO: Members of the Board Committee on Member Oversight

FROM: Alice W. O'Sullivan, 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 Additional Public Comment

ATTACHMENTS: 1. Proposed Standards for Certification and Recertification in Admiralty and Maritime Law (*changes following public comment shown in legislative style*)
2. Explanation of Changes to Standards Following Public Comment

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 an additional 45-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. Maritime law governs such claims and certification would provide a way for consumers to locate competent counsel.

The proposed Standards were circulated for public comment in May 2007. Forty-six comments were received, 26 in favor and 20 opposed. Several comments on both sides of the argument pointed to what they felt were omissions of certain practice areas in the task and experience requirements. After reviewing the comment, the Admiralty and Maritime Law Consulting Group recommended a number of material changes to the Standards to address those concerns and the BLS approved those changes at its January 2008 meeting. As a result, the Procedure for Adoption, Amendment or Repeal of State Bar Regulations requires that the Standards be published for an additional public comment period.

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. Maritime law governs such claims and 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.

In August 2006, the Board of Governors established the Admiralty and Maritime Law Consulting Group to develop standards for certification in the specialty area. The group is composed of prominent practitioners in the field who met a number of times in all-day sessions, during which they developed the Standards that were circulated for public comment.

PUBLIC COMMENT

At its May 2007 meeting, the Board Committee on Member Oversight authorized the publication of the proposed Standards for a 90-day public comment period, which ended on August 9, 2007. The proposed Standards were published in the *California Bar Journal* and on the State Bar website. In addition, notice of the public comment opportunity was sent to admiralty and maritime law practitioners and other interested parties.

Forty-six comments were received, 26 in favor and 20 opposed. Several comments on both sides of the argument pointed to what they felt were omissions of certain practice areas in the task and experience requirements. After reviewing the comment, the Admiralty and Maritime Law Consulting Group recommended a number of material changes to the Standards to address those concerns and the BLS approved those changes at its January 2008 meeting (see Attachment 2 for an explanation of the changes). As a result, the Procedure for Adoption, Amendment or Repeal of State Bar Regulations requires that the Standards be published for an additional public comment period. *(The full text of the written comment will be available at your meeting or in advance from Lorna Maynard at 415-538-2115, lorna.maynard@calbar.ca.gov.)*

FISCAL AND PERSONNEL IMPACT

The Legal Specialization program fund has sufficient revenue to cover any administrative costs. There is no fiscal and personnel impact on the general fund.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

RULE AMENDMENTS IMPACT

The proposed changes impact the Legal Specialization program's Standards for Certification and Recertification in Admiralty and Maritime Law.

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 authorizes 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 an additional 45-day public 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.