

# AGENDA ITEM

**JULY 134**

Establishment of a  
Consulting Group to  
Create Certification  
Standards for a New  
Specialty in Legal  
Malpractice Law  
Within the Legal  
Specialization Program

**DATE:** June 13, 2008

**TO:** Members of the Board of Governors  
Members, 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:** Establishment of a Consulting Group to Create Certification Standards for a New Specialty in Legal Malpractice Law Within the Legal Specialization Program

## **EXECUTIVE SUMMARY**

The Board of Legal Specialization (BLS) requests that the Board Committee on Member Oversight (MOC) recommend that the Board of Governors create a consulting group to develop standards for certification in the area of legal malpractice law.

The Legal Specialization program is a self-funded Supreme Court approved method of certifying attorneys as specialists in particular areas of law. Formal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading to the public. The BLS administers the program. One of its duties, as stated in the program rules, is to propose additional fields of law to be added to the program.

Based on a request from practitioners in the area of legal malpractice law, the BLS is recommending the creation of a consulting group to develop standards for a new specialty in that field.

For questions on this item, please contact Phyllis Culp at [phyllis.culp@calbar.ca.gov](mailto:phyllis.culp@calbar.ca.gov) or 415-538-2118.

## **BACKGROUND**

The Legal Specialization program is a Supreme Court approved method of certifying attorneys as specialists in particular areas of law. Certification validates an attorney's specialty through comprehensive testing, completion of rigorous task and experience requirements, and peer

review by fellow attorneys and bench officers. That validation process serves two important needs: improving the level of practice for attorneys who participate in the certification program, and assisting consumers in identifying lawyers whose procedural and substantive skills match a consumer's specific legal needs. Formal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading to the public.

The BLS administers the program, which is completely self-funded. Over the past 35 years, the program has expanded to provide certification in nine fields: Appellate Law, Bankruptcy Law, Criminal Law; Estate Planning, Trust and Probate Law, Family Law, Franchise and Distribution Law, Immigration & Nationality Law, Taxation Law, and Workers' Compensation Law.

The BLS is tasked with creating new specialties and recommends that a Legal Malpractice Law specialty be considered. In May of this year, the BLS was contacted by Mr. James A. Murphy on behalf of himself and several recognized leaders in the field of legal malpractice with the request that the BLS consider certification in that specialty field.

## **DISCUSSION**

Mr. Murphy's letter referenced the fact that the State Bar has accredited the American Board of Professional Liability Attorneys' certification program in legal malpractice and noted that he is certified by that entity. However, he believes that it is important for the State Bar to establish its own certification program, stating:

California's Rules of Professional Conduct, while similar in many respects to the American Bar Association's Rules of Professional Responsibility, are distinguishable in many significant and sometimes subtle respects. While our California rules state they are not intended to create civil causes of action, in legal malpractice cases experts routinely rely on these rules in opining on the standards of practice for attorneys. In addition, in its Business and Professions Code, Civil Code, and Code of Civil Procedure California has numerous statutes related to these rules and to the practice of law in this state. It is important for any attorney representing a claimant or a lawyer in a legal malpractice case to be extremely conversant with California's own rules and statutes.

Mr. Murphy's letter goes on to say that certification in the area of legal malpractice would enhance attorney competence and provide a higher degree of consumer protection, noting that "[w]ithin the last 15 years there has been an explosion in legal malpractice cases, and the general public, as well as the Bar, would be greatly served through the engagement of lawyers certified as specialists in California legal malpractice claims." He also notes that several judges who have presided over legal malpractice suits have discussed the idea of a legal malpractice specialty with him and other recognized practitioners in the field and "are unanimous in endorsing this specialization."

## **BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

None.

### **FISCAL/PERSONNEL IMPACT**

The Board of Legal Specialization is a self-funded program whose budget includes funds for the development of new specialties. There is no fiscal and personnel impact on the general fund.

### **RULE AMENDMENTS IMPACT**

None.

### **RESOLUTIONS**

Should the Board Committee agree with the recommendation, it would be appropriate to adopt the following resolution:

**RESOLVED**, that the Board Committee on Member Oversight recommends that the Board of Governors establish a Legal Malpractice Law Consulting Group to develop standards for certification as a legal specialist in that practice area.

Should the Board of Governors agree with the recommendation of the Board Committee on Member Oversight, it would be appropriate to adopt the following resolution:

**RESOLVED**, upon the recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby authorizes the establishment of a Legal Malpractice Law Consulting Group to develop standards for certification as a legal specialist in that practice area.