

Admiralty and Maritime Law Public Comment - Organizations

Organization

Consumer Protection League

[We are] a California nonprofit organization founded to assist consumers in a variety of areas, including representation of passengers who sail on local and international cruises leaving from California ports. . . . Counsel unaware that maritime law controls could easily err in failing to recognize federal maritime law often controls even if the matter is brought in California state courts. CPL supports certification so as to increase the likelihood that consumers will be helped by avoiding common mistakes lawyers who are not well versed can make.

CPL also supports giving practitioners the option of seeking certification so that consumers are given access to at least one way of selecting attorneys with appropriate skills. . . . There is presently no ability for consumers to find such specialized counsel other than general searches on the internet which may result in unreliable results.

Organization

Florida Admiralty & Maritime Law Certification Comm

Moon

Stephen M.

I am the current chair of the Admiralty and Maritime Law Certification Committee for the Florida Bar.

My certification field has enjoyed success because the lawyers in Florida that practice this specialty wanted to be able to demonstrate to the public and other practitioners that competence comes from experience and integrity. . . . The Florida Bar has embraced board certification because it helps to insure competence and improves the image of lawyers in general. . . .

Organization

Pacific Admiralty Seminar of Bar Assn of SF

Krieger

Lynn

L.

See Sanchez comment received 6/25/08.

Sanchez Jennifer Tomlin

Maritime law practice is very broad and encompasses many different areas of law. . . We doubt many California attorneys who practice in some of these maritime areas are, or could be, proficient in all the varied aspects of maritime law. . . Certifying specialists in a practice area as broad a "admiralty and maritime" does not assist the public in identifying an attorney proficient in a particular area of maritime law and practice. . . The proposed certification does not guard against a specialist claiming proficiency in maritime legal matters in which the attorney may have very little or no experience.

The PAS Steering Committee does not see a need for certification. . . A substantial amount of maritime legal services are provided in commercial matters where the parties and their insurers are knowledgeable about the need for maritime counsel and about which particular maritime firms have the necessary expertise. . . Likewise, personal injury claims of workers in maritime industries. . . also involve these workers' unions, which are knowledgeable and well-informed about selection of appropriate counsel.

.. [C]ertification of a specialty involving substantive federal law is inconsistent with the concept of admiralty law as a federal body of law to be uniformly applied in all states.

. . . [T]he proposed certification criteria have numerous problems, most of which are indicative of the problem of certifying such a broad area of civil practice. Some areas are not adequately addressed. . . , others are overemphasized. . . Attorneys proficient in very specific areas of maritime practice are at risk of not qualifying. . . at all. Moreover, it is doubtful any attorney in California. . . could satisfy the 60 units of CLE required five years before certification. [Note: the requirement is 45 hours during the three years prior to application.]

Sanchez Jennifer Tomlin

Standards are blatantly weighted to give maximum credit to maritime personal injury lawyers and fail to address many other areas. As a result, they cannot assist the public to identify attorneys proficient in admiralty and maritime law. (Letter gives specific examples from the Standards.)

Not enough CLE available to comply with 45-hour requirement.

If California adopts the ABA model rules of professional conduct, they will allow admiralty and maritime law practitioners to use the designation "Admiralty" or "Proctor in Admiralty," providing the public with the same information and comfort as the "certified" designation.

Organization *Seafarers' Benefit Fund*

Friend Jim

[We are] a nonprofit organization that promotes and protects the legal and other rights of seafarers. . . While we know many local counsel qualified to assist in Los Angeles, we are not as familiar with specialty counsel in other parts of California. Having access to specialty referral on the State Bar's webpage would not only help us but many others. . . looking for maritime counsel throughout the state.

Organization *The Maritime Law Assn of the U.S.*

... [A]dmiralty and maritime law is not a single specialty; it encompasses a great many practice areas. . . It would be highly misleading to the public for a lawyer, no matter how skilled . . . in, say, maritime personal injury or cargo law, to claim expertise in ship financing, pilot matters, or marine insurance, if the lawyer's practice had not also encompassed a wide number of cases involving those matters, which is highly unlikely. To the extent the mission of the State Bar is in part the protection of the public and overseeing the skilled and efficient delivery of legal services to California's citizens, [certification] with its inherent implication that any certified attorney is skilled in each and every subset of admiralty and maritime law, would be misleading and counterproductive, as well as inappropriate.

... [C]ertification . . . is a solution in search of a problem. In this age of virtually universal access to computers and the Internet, no potential client in need of a maritime lawyer's services would have any difficulty finding one. . . Almost all consumers of the services of maritime lawyers are fully capable of finding attorneys with the particular skills and expertise which they need. . .

As the United States Supreme Court said in 1917, no State legislation should be allowed to prejudice uniformity, one of the characteristic and most important features of maritime law . . . Accordingly, if certification or regulation is to be done at all, it should be done on the national and should await the development of a nation-wide consensus on applicable standards and rules.

... Since 1981, . . . lawyers who have demonstrated knowledge of and competence in maritime law, and who have at least four years of experience as Associate Lawyer members of the MLA, have been able to apply to become Proctor members of our Association [and] are allowed to advertise this designation on business cards, letterhead, and firm or personal websites, signifying their enhanced expertise in the areas of maritime law in which they practice. . . This program enables potential clients in search of maritime lawyers to find counsel who have demonstrated to their peers that they are dedicated to the skilled and ethical practice of maritime law . . .

Maynard, Lorna

From: Consumer Protection League [consumer_protection_league@yahoo.com]
Sent: Thursday, August 09, 2007 10:02 PM
To: Legal Specialists
Subject: Certification of Special Maritime Practice

9 August 2007

Board of Legal Specialization
State Bar of California
180 Howard Street
San Francisco, California 94105

Re: Certification of Maritime Speciality Practice

Dear Board of Legal Specialization Members:

We write in support of certification of maritime law as a speciality practice. We believe certification will assist consumers of legal services select qualified counsel who have demonstrated an ability to practice in this well-recognized specialized area of law.

The Consumer Protection League (CPL) is a California nonprofit organization founded to assist consumers in a variety of areas, including representation of passengers who sail on local and international cruises leaving from California ports. Unlike other areas of law, maritime practice presents unique issues often requiring specialized care. Counsel unaware that maritime law controls could easily err in failing to recognize federal maritime law often controls even if the matter is brought in California state courts. CPL supports certification so as to increase the likelihood that consumers will be helped by avoiding common mistakes lawyers who are not well versed can make.

CPL also supports giving practitioners the option of seeking certification so that consumers are given access to at least one way of selecting attorneys with appropriate skills. As in other areas of specialized practice, creating a list of those certified in maritime area of law will likely permit a screening and referral mechanism for consumers looking for maritime counsel. There is presently no ability for consumers to find such specialized counsel other than general searches on the internet which may result in unreliable results.

We welcome the opportunity to provide our comment and would be pleased to further present additional information at any upcoming hearing for consideration.

Sincerely,

10/31/2007

Consumer Protection League

Be a better Globetrotter. Get better travel answers from someone who knows.
Yahoo! Answers - Check it out.

Be a better Heartthrob. Get better relationship answers from someone who knows.
Yahoo! Answers - Check it out.



STEPHEN M. MOON, P.A.

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PORT CANAVERAL, FL 32920

STEPHEN M. MOON, ESQ.
Board Certified Admiralty and Maritime Lawyer

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August 9, 2007

Board of Legal Specialization
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Board Certification-Admiralty and Maritime Law

To whom it may concern:

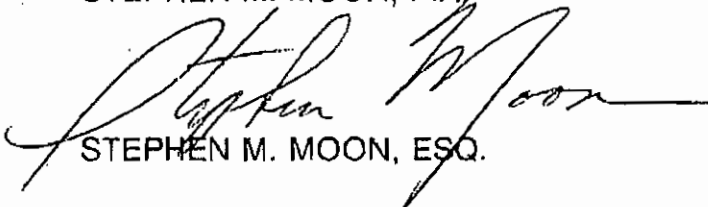
I am the current chair of the Admiralty and Maritime Law Certification Committee for the Florida Bar. I have been board certified by the Florida Bar since the field was approved in 1996. Each applicant must satisfy CLE requirements, submit to peer review and pass a challenging examination.

My certification field has enjoyed success because the lawyers in Florida that practice this specialty wanted to be able to demonstrate to the public and other practitioners that competence comes from experience and integrity. My peers embrace it and work hard to attain certification. The Florida Bar has embraced board certification because it helps to insure competence and improves the image of lawyers in general. The Florida Bar does an excellent job of promoting the importance of selecting a board certified attorney whenever possible.

I am confident that the California Bar will benefit from board certification in Admiralty and Maritime Law. Our committee will be happy to assist you in any way possible so that you can achieve your goal of insuring competence in this unique and rewarding field.

Very truly yours,

STEPHEN M. MOON, P.A.



STEPHEN M. MOON, ESQ.

July 1, 2008

Via Email and Facsimile
legalspec@calbar.ca.gov
(415) 538-2180

Board of Legal Specialization
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Proposed Specialty Certification in Admiralty and Maritime Law

Dear Boardmembers:

I strongly oppose the proposed specialty certification in Admiralty and Maritime Law. Below are the specific comments and bases for criticism of the proposed certification drafted by Jennifer Tomlin Sanchez. The points below have been discussed at length at various Pacific Admiralty Seminar Steering Committee meetings, and among numerous admiralty practitioners outside of those meetings. I am sending these points verbatim because I agree with all of them. Thank you in advance for your consideration.

This is a public comment on behalf of the Pacific Admiralty Section of the Bar Association of San Francisco.¹ On behalf of the PAS Steering Committee, I previously wrote to you encouraging you not to approve a specialty for admiralty and maritime law in California. For all of the reasons stated in our previous letter, we continue to oppose the proposed specialty, and offer this further comment on the revised proposed requirements.

To assist the Board in understanding the breadth of maritime practice, attached is the topic list from the American Maritime Case digest. (The AMC reporter, founded in 1923, reports all significant maritime decisions by United States federal and state courts, and is used extensively by maritime lawyers.) Also attached is a listing of substantive committees of the Maritime Law Association of the United States. These two lists illustrate the extremely varied nature of the admiralty and maritime practice, and the inadequacy of the proposed requirements, which fail to adequately address many maritime practice areas, or simply leave them out altogether.

Following are some of the specific problems with the proposed certification requirements.

¹ There are 49 people on our PAS roster. However, because PAS is a section of the Bar Association of San Francisco, which has 8,000 members, this public comment is approved by the BASF and its Board of Directors. We ask the Board of Legal Specialization consider these facts and accord the appropriate weight to the PAS' position.

1. The Certification Requirements are Poorly Drafted.

The proposed certification requirements are blatantly weighted to give maximum credit to maritime personal injury lawyers, and fail to address many areas of maritime law. By being specifically weighted to favor a particular group of maritime lawyers and ignoring the practice of others, the proposed certification requirements are not drafted to help the public identify attorneys proficient in admiralty and maritime law.

Task 2.2.5 gives 30 points for preparing and filing a maritime personal injury complaint. There is no provision giving credit for answering or responding to a personal injury complaint. There is no provision giving points to an attorney who prepares and files any complaint other than one for personal injury.

Task 2.1.6 allows 25 points for serving as a principal attorney in a dispositive motion, arbitration, or trial of a cargo case. As drafted, an attorney in a multi-million dollar cargo case could spend weeks in trial and earn less credit than an attorney who files a personal injury complaint, which can be done on a basic judicial council form complaint.

Task 2.1.7 addresses credit for tort actions. There is no corollary provision for contract actions despite the fact that a significant portion of maritime disputes involve contract disputes.

There are no provisions giving credit for acting as the principal attorney in a dispositive motion, arbitration, or trial of many admiralty and maritime matters, including the following:

- Ship finance
- Yacht licensing, mooring, repairs, collisions
- Criminal matters
- Marina liability
- Marine construction
- Marine insurance coverage disputes
- Towing disputes
- Breach of a marine services agreement (MSA)
- Breach of a charter party
- Salvage disputes
- Piracy
- Fisheries
- Bankruptcy actions involving vessels

The requirements also fail to address General Average, and the various tasks relating to General Average. Following is the definition of General Average from the Glossary of Marine Insurance and Shipping Terms:²

An ancient principle of equity, recognized by maritime nations, predating the concept of insurance and still valid today, in which all parties involved in a sea adventure (vessel, cargo, and freight) proportionally share losses resulting from a voluntary and successful effort to save the entire venture from an imminent peril.

Interests on behalf of the COSCO BUSAN declared General Average after the vessel spilled fuel oil in San Francisco Bay in November 2007. General Average is one of the "saltier" aspects of our practice, unique to admiralty, but wholly forgotten by the proposed requirements.

Task 2.1.8 awards 30 points for an "arrest of a vessel to the conclusion of the action." As drafted, this does not make sense. A vessel may be arrested to enforce a maritime lien pursuant to FRCP, Supplemental Admiralty Rule C. (This is one of the "lettered" Federal rules cited as a basis for the need of an admiralty certification in California.) The arrest process obtains jurisdiction over a defendant vessel and provides security for the lien holder. The arrest in and of itself is not an "action" taken to a conclusion. In many cases, security in the form of a bond or a Letter of Undertaking is put up on behalf of an arrested vessel, and the vessel is then released. It is doubtful that the drafters of the proposed requirements intended accepting security for the release of an arrested vessel as the "conclusion", though the vessel is released and the arrest concluded.

If the drafters of the proposed requirements intended to award points for arresting a vessel, then 2.1.8 should be drafted to do so. It is not. Also, provisions would need to be included to award points for moving to quash or set aside an arrest, actions for wrongful arrest, and motions for seeking a lesser amount of security.

The requirements fail to allow points for any tasks involving the following "lettered" admiralty procedural rules (the rules cited as a basis for the need for certification):

Rule B: In Personam Actions: Attachments and Garnishment
Rule D: Possessory, Petitory, and Partition Actions

Marine insurance is not adequately addressed. The few nods to marine insurance include task 2.2.8(e) awarding 15 points for drafting a marine insurance contract (something few if any maritime lawyers actually do), and task 2.2.9

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awarding 10 points for giving written legal advice about marine insurance coverage. Maritime lawyers regularly perform tasks relating to marine insurance beyond advising their clients, including litigation of coverage disputes.

Salvage is not adequately addressed. Only task 2.2.10 addresses salvage, awarding 5 points for giving advice regarding a salvage claim. It should be obvious that maritime lawyers involved in salvage and salvage disputes do much more than advise clients, and the requirements should reflect that.

Marine pollution is not adequately addressed. The only credit is task 2.1.7 awarding 40 points to a principal attorney in a dispositive motion, arbitration, or trial of a pollution claim. Maritime attorneys act in many other areas involving pollution other than dispositive motions, arbitration, and trials. For example, many legal issues arose following the fuel oil spill of the COSCO BUSAN in November 2007, which are not addressed by the proposed requirements. Maritime environmental law is a significant practice area. An entire session is devoted to the subject at the Pacific Admiralty Seminar 2008. (A copy of the PAS 2008 brochure is attached.)

Given that the requirements are so poorly drafted and many practice areas are ignored or not adequately addressed, we are concerned about what might be included on the written test for certification. Even if a lawyer were able to acquire sufficient points to certify as a specialist, there is real concern about whether lawyers who practice in areas other than personal injury could pass the test if it is as blatantly weighted to give the advantage to maritime personal injury lawyers as the proposed requirements.

2. Certification is Impossible Because of the CLE Requirements.

It is not possible to satisfy the proposed requirement of 45 credits in admiralty CLE obtained in the 3 years before application for certification. The PAS is the primary provider of admiralty CLE in California. The PAS conducts a two-day biennial seminar that generally provides 15 CLE units. (In 2006, the seminar was held in conjunction with the San Francisco meeting of the Maritime Law Association of the United States, and was reduced to a single day providing only 6 units.) The maximum number of admiralty CLE credits that can be obtained in 3 years is 30, assuming the PAS sticks to its two-day format. Even if additional CLE providers were to come forth, it is unlikely we are going to have the significant number of programs needed to satisfy the proposed certification requirements.

There is a maritime law symposium held biennially at Tulane University in New Orleans which provides 10 to 15 CLE units. It would be unfair and frankly absurd if qualifying as certified California Legal Specialist required traveling to another state for legal education.

The only other alternative to satisfy the CLE requirement is to be a recent graduate of an accredited LLM in admiralty. The only ABA accredited LLM in admiralty is at Tulane Law School in Louisiana. Thus, the only qualified applicants for certification who are likely to

qualify are recent Tulane Law School graduates. Of course, this would bar nearly every experienced maritime lawyer in California from certifying as a specialist, and would be inconsistent with the stated purposes of the Legal Specialization program to help the public identify attorneys proficient in a particular area of law.

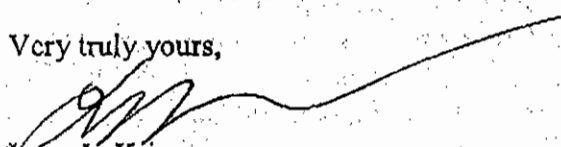
3. California's Revisions to the Rules of Professional Responsibility Already Address Admiralty Practice.

Admiralty, along with patent law, is already recognized by the ABA model rules of professional responsibility. Rule 7.4 (c) provides that "a lawyer engaged in Admiralty practice may use the designation 'Admiralty,' 'Proctor in Admiralty' or a substantially similar designation." Subsection (d) bars other lawyers from stating or implying that they are certified as a specialist in a particular field of law unless "certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association."

The California State Bar Commission for the Revision of the Professional Rules of Conduct is currently engaged in revising California's rules to make them consistent with the format of the ABA Model Rules of Professional Conduct.³ On October 8, 2004, the Commission tentatively approved Proposed New Rule 7.4, which is nearly identical current ABA Model Rule 7.4. If formally approved by the California Supreme Court, new rule 7.4 will allow California lawyers engaged in Admiralty practice to use the designation "Admiralty," or "Proctor in Admiralty," or a substantially similar designation.

The Board of Legal Specialization's consideration of an admiralty and maritime specialty appears to be at odds with the Commission's position acknowledging that admiralty lawyers currently enjoy a distinction. The basis behind the ABA's recognition of the unique character of admiralty lawyers is thoughtfully set out in *The Proctor's Dilemma: Certifying Specialties in Admiralty*, Graydon S. Staring, 28 J. Mar.L. & Com 503 (1997). A copy of this article was attached to our initial letter, and we again attach it here because of its outstanding discussion of proposed certification of admiralty and maritime specialties.

Very truly yours,



Lynn L. Krieger
Secretary
2008 Pacific Admiralty Seminar
Steering Committee
California Bar No. 209592

³ California State Bar Releases Proposal to Update Standards, Adopt ABA Format, 75 U.S. L. Wk. 2067, 2067 (2006).



THE BAR ASSOCIATION OF
SAN FRANCISCO

THE STATE BAR OF CALIFORNIA
SPECIAL ADMISSIONS AND SPECIALIZATION

JUN 25 2008

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State Bar of California
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San Francisco, CA 94105

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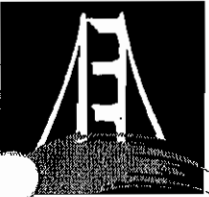


THE BAR ASSOCIATION OF
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Jennifer Tomlin Sanchez
Gibson Robb & Lindh LLP
Chair
2008 Pacific Admiralty Seminar
Steering Committee
California Bar No. 191548



THE BAR ASSOCIATION OF
SAN FRANCISCO

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AND GENERAL COUNSEL

Niel Burkhardt

July 25, 2007

Via Email and Facsimile
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(415) 538-2180

Board of Legal Specialization
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Proposed Specialty Certification in
Admiralty and Maritime Law

Dear Board Members:

I am writing on behalf of the Pacific Admiralty Section of the Bar Association of San Francisco to express our opposition to the proposal to certify admiralty and maritime law as a specialty in California.

I am the current chair of the Pacific Admiralty Section of the Bar Association of San Francisco, and a partner at Gibson Robb & Lindh LLP. The Pacific Admiralty Section organizes the Pacific Admiralty Seminar, a two-day seminar on recent developments in admiralty and maritime law. The Pacific Admiralty Seminar (PAS) has been held biennially in San Francisco for nearly 30 years. The next two-day seminar will be in October 2008. The seminars are designed to provide analysis of recent developments in maritime law, and typically provide 10 units of continuing legal education. The seminar is generally attended by more than 200 people, most of whom are lawyers. I am including a copy of the brochure of last year's seminar if you are interested in learning more about us. The

2006 seminar was unique in that it was only a single day to coincide and coordinate with the fall meeting of the Maritime Law Association of the United States, which was held in San Francisco for the first time in many years.

The seminar is organized by volunteer Bay Area attorneys who practice in the various areas of admiralty and maritime law. The PAS Steering Committee meets once a month to plan the next seminar, including deciding the maritime law topics worthy of focus at the seminar, recruiting the foremost legal experts in those areas, as well as tending to the more mundane organizational details of the two-day seminar.

The Committee considered the proposed specialty in admiralty and maritime law as an agenda item at recent PAS Steering Committee meetings, including one extraordinary meeting called specifically to discuss this one topic. As a result of those meetings, the PAS Steering Committee overwhelmingly agreed to oppose the certification of admiralty and maritime law as a specialty in California.

Maritime law practice is very broad and encompasses many different areas of law involving contract, tort, financing, choice of law, and environmental issues. A maritime law practice may deal with statutes and regulations that govern vessel operations, piers, marinas, environmental issues regarding the impact of maritime activities upon navigable waters, injury and other claims by maritime workers including seamen covered by the federal Jones Act, longshore and harbor workers covered by the federal Longshore and Harbor Workers Compensation Act, as well as the claims of vessel passengers. The practice includes the various issues relating to financing of vessel construction and operations, the protection of maritime creditors, procedures for collection of maritime debts and maritime liens, vessel charter parties, and marine insurance issues. Maritime practice involves the carriage of goods and disputes relating to cargo damaged while in transit between international ports under various transportation documents and contracts of carriage. Maritime cases involve salvage claims, piracy, towing, wreck removal, pilotage, and more. Even within these practice areas, there are discrete sub-parts.

We doubt many California attorneys who practice in some of these maritime areas are, or could be, proficient in all the varied aspects of maritime law. Many of us practice in just a few focused areas. Certifying specialists in a practice area as broad as "admiralty and maritime" does not assist the public in identifying an attorney proficient in a *particular* area of maritime law and practice. As a result, the proposed certification does not offer the public assurance that an attorney certified as a "specialist" in maritime law would be proficient in the particular area of maritime law required by a person in need of legal assistance in a maritime matter. The proposed certification does not guard against a specialist claiming proficiency in maritime legal matters in which the attorney may have very little or no experience.

The PAS Steering Committee does not see a need for certification of admiralty or maritime law. A substantial amount of maritime legal services are provided in commercial matters where the parties and their insurers are knowledgeable about the need for maritime counsel and about which particular maritime firms have the necessary expertise to address a particular issue. Likewise, personal injury claims of workers in maritime industries - seamen, stevedores, and longshoremen - also involve these workers' unions, which are knowledgeable and well-informed about selection of appropriate counsel.

The PAS Steering Committee is also concerned that certification of a specialty involving substantive federal law is inconsistent with the concept of admiralty law as a federal body of law to be uniformly applied in all states.

Even if the Board of Legal Specialization was inclined to certify this broad practice area as a specialty, the proposed certification criteria have numerous problems, most of which are indicative of the problem of certifying such a broad area of civil practice. Some areas are not adequately addressed in the criteria (marine insurance), others are overemphasized (personal injury claims of maritime workers). Attorneys proficient in very specific areas of maritime practice are at risk of not qualifying as specialists at all. Moreover, it is doubtful *any* attorney in California (except perhaps a recent recipient of an LL.M. degree) could satisfy the 60 units of CLE required five years before

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certification. Our seminar is one of the only California CLE providers in admiralty matters, if not *the* only. We provide about 10 CLE units every other year far less than the proposal requires. We do not believe it is either fair or wise to put in place a State Bar certification process the requirements for which cannot be satisfied within the State of California.

For these reasons, the PAS Steering Committee opposes the proposal to certify admiralty and maritime as a legal specialty in California. Thank you for your consideration of our concerns.

Respectfully submitted,



Jennifer Tomlin Sanchez

Chair

2008 Pacific Admiralty Seminar

Steering Committee

California Bar No. 191548

SEAFARERS' BENEFIT FUND

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1212 BROCKTON AVENUE, SUITE 201
LOS ANGELES, CA 90025

August 9, 2007

Board of Legal Specialization
State Bar of California
180 Howard Street
San Francisco, California 94105

Re: Certification of Maritime Speciality Practice

Dear Board:

The Seafarers' Benefit Fund is a nonprofit organization that promotes and protects the legal and other rights of seafarers. The courts have long regarded crew as wards of the court needing special protection. We write in support of certifying maritime law as a speciality practice to assist seafarers in California find appropriate legal counsel and to protect them from counsel that may mislead them.

Due to their lack of legal and financial resources, we provide assistance and direction to crewmembers. While we know many local counsel qualified to assist in Los Angeles, we are not as familiar with speciality counsel in other parts of California. Having access to speciality referral on the State Bar's webpage would not only help us but many others with access to the internet looking for maritime counsel throughout the state.

We also believe that adopting certification in this area of law, already recognized by most as a speciality practice, will promote our shared goals of serving the public interest. We thank you for your consideration of this important issue.

Very Truly Yours,

Jim Friend

Seafarers' Benefit Fund

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OF THE UNITED STATES

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VIA E-MAIL (legalspec@calbar.ca.gov)
AND FACSIMILE (415-538-2180)

August 6, 2007

Board of Legal Specialization
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Specialty Certification in Admiralty and Maritime Law

Dear Board Members:

I am writing to you as President of The Maritime Law Association of the United States ("MLA") to state the MLA's opposition to the proposed specialty certification of admiralty and maritime law by the State Bar of California.

The MLA is an organization of approximately 3,100 members, the vast majority of whom are lawyers who practice or have a significant interest in maritime law. Currently, we have about 230 members in the State of California.

When I learned of the Board's proposal, I appointed a committee of experienced California maritime practitioners to advise the MLA on the certification issue as it pertains to your State. All of them are members of the California Bar, and they are resident in both Northern and Southern California. The members of the committee are Forrest Booth of San Francisco; George Nowell of San Francisco; Thomas Russell of the Port of Los Angeles; Stanley Gibson of San Francisco; William Collier of Long Beach; Charles S. Donovan of San Francisco; Erich Wise of Long Beach; and Graydon Staring of Oakland. It was their unanimous recommendation to me and the other officers of the MLA that certification is unnecessary, would serve no useful purpose, and runs the risk of misleading the public.

I. ADMIRALTY IS NOT A UNITARY PRACTICE

The MLA opposes certification because admiralty and maritime law is not a single specialty; it encompasses a great many practice areas. Without listing them individually, the MLA has identified at least 29 substantive areas within maritime law that are dealt with, from time to time, by admiralty law practitioners. That does not include subjects such as taxation and family law, which occasionally become involved in maritime death or survivorship cases, but which are not normally considered to be part of maritime law.

Many respected admiralty practitioners in the United States confine their practice exclusively to one substantive area, such as personal injury claims on behalf of plaintiffs, maritime environmental pollution cases, or cargo subrogation claims. A noted San Francisco maritime lawyer and partner in the firm of Lillick & Charles LLP, a prominent California law firm with a significant maritime practice (now merged into Nixon Peabody LLP), wrote in 1997 that no admiralty or maritime lawyer could honestly claim to be fully qualified to represent clients in all phases of maritime practice. Graydon S. Staring, *The Proctor's Dilemma: Certifying Specialties in Admiralty*, 28 J. MAR. L. & COM. 503 (1997). That is even truer today, as the practice has become more concentrated and compartmentalized.

It would be highly misleading to the public for a lawyer, no matter how skilled he or she might be in, say, maritime personal injury or cargo law, to claim expertise in ship financing, pilot matters, or marine insurance, if the lawyer's practice had not also encompassed a wide number of cases involving those matters, which is highly unlikely. To the extent the mission of the State Bar is in part the protection of the public and overseeing the skilled and efficient delivery of legal services to California's citizens, the MLA submits that the certification of admiralty as a specialty, with its inherent implication that any

certified attorney is skilled in each and every subset of admiralty and maritime law, would be misleading and counterproductive, as well as inappropriate.

II. CERTIFICATION WOULD NOT ASSIST IN IDENTIFYING QUALIFIED COUNSEL

The MLA believes that certification of admiralty and maritime law is a solution in search of a problem. In this age of virtually universal access to computers and the Internet, no potential client in need of a maritime lawyer's services would have any difficulty finding one. All 234 MLA members in California are listed on our website. No doubt some non-MLA members also list admiralty and/or maritime law on their personal or firm websites.

Almost all consumers of the services of maritime lawyers are fully capable of finding attorneys with the particular skills and expertise which they need. Vessel owners, banks, marine insurers and other businesses in the maritime industry have their lists of preferred admiralty counsel, usually in every jurisdiction across the globe in which they do business. On the employees' side, seamen, longshoremen and other maritime workers, through their union representatives, have access to personal injury specialists and other lawyers who typically represent employees involved in maritime injury claims, labor disputes, and other types of marine cases. All of these organizations know the lawyers they wish to recommend and the skills and experience of those lawyers. Even California yacht clubs and sailing magazines such as *Latitude 38*, published in San Francisco, provide postings for maritime lawyers.

Some lawyers who favor certification have suggested that cruise ship passengers need of a new way to identify and select counsel. Those individuals, however, generally need representation for claims arising out of personal injuries suffered during cruises. Such claimants could be better served by a skilled plaintiff's personal injury attorney than by a "certified" maritime lawyer whose expertise is in cargo subrogation, ship finance, or protection of the marine environment.

III. UNIFORMITY IS CRITICAL IN MARITIME LAW

As the United States Supreme Court said in 1917, no State legislation should be allowed to prejudice uniformity, one of the characteristic and most important features of maritime law. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917) Admiralty and maritime law is made up largely of federal common law, federal statutes, and international treaties and agreements. It is almost always multistate, if not international, in its scope.

Accordingly, if certification or regulation is to be done at all, it should be done on the national and should await the development of a nation-wide consensus on applicable standards and rules.

Recognition of the need for uniformity is one of the major reasons all States in the United States (except Florida) that have considered this matter, as well as the American Bar Association, have rejected certification of admiralty as a specialty. Even Florida, which has such a certification, has found that the program has not been an economic success. Florida certifies 22 areas of specialty law practice. As of 2006, there were only 55 certified admiralty law practitioners in Florida, and only 8 have been certified in the past 5 years, a rate of essentially only one per year.¹

IV. THE MLA OFFERS AN ALTERNATIVE TO CERTIFICATION

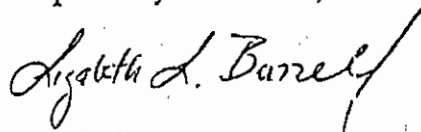
For the reasons set forth above, the MLA has specifically chosen not to become a certifying agency for admiralty and maritime practitioners. Since 1981, however, lawyers who have demonstrated knowledge of and competence in maritime law, and who have a least four years of experience as Associate Lawyer members of the MLA, have been able to apply to become Proctor² members of our Association. Those who achieve Proctor status within our Association are allowed to advertise this designation on business cards, letterhead, and firm or personal websites, signifying their enhanced expertise in the areas of maritime law in which they practice. On our website, Proctor members are also designated by a "P" next to the year of their admission to the MLA. This program enables potential clients in search of maritime lawyers to find counsel who have demonstrated to their peers that they are dedicated to the skilled and ethical practice of maritime law, in at least one of its subspecialties.

V. CONCLUSION

The MLA appreciates the Board's consideration of its views. The MLA urges the members of the Board to vote against certifying admiralty and maritime law as a specialty in the State of California.

1. See the attached letter from James F. Moseley, a senior maritime lawyer in Jacksonville, Florida. Mr. Moseley is a former President of the MLA.
2. "Proctor" is the traditional and historic title of practitioners of admiralty law.

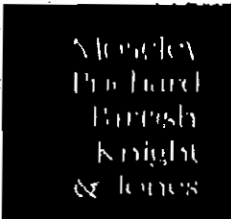
Respectfully submitted,



Lizabeth L. Burrell,
President

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

LLB/FB:dhd
Attachment



Attorneys & Counselors at Law

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James F. Moseley
jfmoseley@mppk.com

July 29, 2007

- James F. Moseley •
- J.W. Prichard, Jr.
- Robert B. Parrish
- Andrew J. Knight II •
- Richard K. Jones
- James F. Moseley, Jr. •
- Phillip A. Buhler
- Stanley M. Weston
- Tracy Alan Chesser •
- Charles M. Trippo •
- Eric L. Hearn
- David C. Reeves
- P. Michael Leahy
- Thomas C. Sullivan •
- Ann M. Winfield
- Shoa M. Moser
- Caroline M. Klancke

Forrest Booth, Esquire
Severson & Werson
One Embarcadero Center, FL 26
San Francisco, CA 94111

RE: State Admiralty Certifications Initiatives

Dear Forrest:

Earlier this month President Liz Burrell graciously contemplated that I might be able to add some measure of assistance to you in the State Certification matter that has arisen in California. With her usual grace it appears to me that she somehow contemplates that an old Florida mule can somehow hold his own while trying to keep up with you and your Committee of thoroughbreds.

In order to give a background of the Florida plan, I provide the following information that may or may not be helpful.

Basically, the current Florida admiralty certification plan has not been a success from enrollment of persons or "prestige". It may be barely cost effective to the Bar.

I have once again reviewed Gray Staring's article, have reviewed Liz's article, the MLA transcript of many years ago and all of the other documents submitted to me. Since I was a member of the then Executive Committee in 1978 to 1981, I recall the discussions that surrounded this issue pending at that time before the ABA. Gray Staring, Ken Volk, Herbert Lord, John Sims and Gordon Paulsen were all involved and the Executive Committee worked hard on this. Additionally, when I was First Vice-President of MLA from 1994 to 1996 the Florida Bar entered the admiralty certification area and I worked on the Florida Bar project expressing the MLA position. At that time, MLA felt that it did not have the financial resources nor demand by its members to be a national certifying entity such as N.I.T.A is for trial certification. I would expect the same is true today.

As to the Florida Bar initiative, I believe that November of 1994 and May of 1995 were the main areas of our communication. Unfortunately the

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James E. Williams
of Counsel

E. Dale Joyner
(1943-1993)

* Also Admitted in Georgia
• Certified Circuit Mediator
State and Federal Courts

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correspondence and written activity have probably long disappeared from our office; however, I will run another check in our closed file area. I do recall writing a position paper that was either adopted by the MLA Board of Directors or in the interim approved by the officers asking that the Florida Bar not consider admiralty as a State specialty because of the historical significance of ABA position. When that appeared to fail, MLA then ask for additional time to present additional information. My recollection is that our first request for additional time was granted but the second request was denied.

The admiralty specialty was a "three wave concept" of State certification.

In Florida the "first wave" was a "designation" system. The designation system was basically that you could designate up to three areas of practice, prepare a form that generally showed your experience and length of practice and then submit this form to the Designation Committee. The Designation Committee consisted of about a dozen persons. According to my recollection, most Designation Committee members, if not all, had been rather lengthy members of the American College of Trial lawyers. My recollection is this was in the late seventies or early eighties. I was a member of that Committee for the Florida Bar. Some practitioners were "admiralty designated" and some did not designate. Most admiralty practitioners did not designate. In fact, I cannot recall many MLA members who did. This system was not a success and the designation was abandoned.

The "second wave" was a few specialties (not admiralty) in the eighties. I believe the Civil Trial Certification and the Criminal Law Certification were among the first in 1983. Once again, to test this, the American College of Trial Lawyers' Fellows in Florida was called upon. I was one of the examiners and question writers, but had to withdraw because of a series of trials around the same time as the grading activity. However, the system of certified civil trials has worked reasonably well because procedure and rules of evidence are very testable. I don't believe that any Fellows were grandfathered into the system.

In the mid nineties, the Florida Bar began multiple designations. There were rumbles around the country about having an "admiralty specialty". In Florida the rumbles principally arose from the personal injury plaintiff's bar, but not exclusively. Coupled with this was this was the advertising initiatives that were taking place. These apparently went hand-in-hand.

There are now twenty two areas of certification:

- Admiralty and maritime
- Appellate Law
- Aviation Law

- Civil Trial Law
- Elder Law
- Immigration and Nationality
- Intellectual Property
- International Law
- Labor and Employment Law
- Marital and Family Law
- Tax Law
- Antitrust and Trade Regulation
- Business Litigation
- City, County and Local Government Law
- Construction Law
- Criminal Appellate
- Criminal Trial
- Health Law
- Real Estate
- State and Federal Government and Administrative Practice
- Wills, Trusts and Estates
- Workers' Compensation

Most were created in the late eighties and nineties. Only two have been created since 2000.

In any event, the Florida Bar set up the procedure for certification of admiralty. About a dozen persons volunteered to be the Selection Committee and they were automatically grandfathered in. Most of the persons who had a substantial admiralty practice were MLA members who felt that it was inappropriate to become certified considering their longtime involvement with MLA. So they did not participate. However, since the Florida Bar had moved from the designation process to the certification process it was felt that maybe, just maybe, the next move by the Florida Bar would be some sort of mandatory effort so that if you were not certified you would not be able to practice in that area. In that regard most firms had their young lawyers take the certification and they were successful. Since that time, each of these lawyers have had to take additional CLE other than the mandatory CLE.

Since the certification process has begun, I have kept tabs of the number of admiralty certified lawyers. Since the initial test and certification in 1996 some of those certified have dropped out, passed away or other personal changes. The Florida Bar consists of over 80,000 lawyers of which approximately 10,000 are practicing out of Florida and another 5,000 or so are in government services. In 1996 thirty-one lawyers passed the exam and there were approximately a dozen who were administering the test or approximately forty-three persons total who were certified. In 1997 two certified. In 1998

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none certified. In 1999 one certified. In the year 2000 eight certified. In 2001 one certified. In 2002 two certified. In 2003 two certified. In 2004 none certified. In 2005 two certified. In 2006 two certified. In 2006 there was currently fifty-five persons practicing in the state who are certified and one practicing in the Virgin Islands who is a member of the Florida Bar. Of these thirty-three have been a member by either examination or administering the test in 1996.

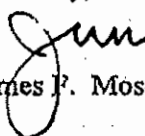
On balance, since the beginning of the program there has only been a net gain of about twelve and only eight in the last five years. The only certification groups that appear to be smaller would be the Anti-Trust and Trade Regulation, Aviation, Immigration and Nationality Law, and International Law. The balance of the twenty-two certifications areas are extensively larger by tremendous amount than admiralty.

In summary, the Florida experiment has resulted in persons becoming disenchanted with the fact that this did not bring them new clients, new "fans" and only have required additional CLE attendance. The Florida Bar must be generally unhappy since the large number of certification in other areas makes it more of a money maker or at least pay as you go. In the Florida Bar Journal of June 2007, Committees of the Bar report: Neither the Admiralty Law Committee nor the Admiralty Certification Committee submitted a report or published a report.

If I may be of help please let me know.

Best regards.

Sincerely,


James P. Moseley

JFM/bt

Cc: Lizabeth L. Burrell, Esquire
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Phillip A. Berns, Esquire
(via email: pberns@earthlink.net)
John A. Edginton, Esquire
George W. Nowell, Esquire