

Admiralty and Maritime Public Comment - No (individuals)

Last Name First Name MI Notes

- 1 Adkinson Theodore H. . . . [M]aritime law is ill suited for such a certification due to the field's numerous subcategories
 . . . One would hope that a maritime attorney with experience and knowledge in a specific subcategory would not feel qualified to jump into another maritime field without any experience in that other field, but I suspect that some may feel confident in doing so after becoming a "certified maritime attorney." Consequently, a certification . . . may in the end provide a false sense of security not only to the public, but also to its own members.
- 2 Berns Philip A. Well intended but insubstantial and inaccurate basis for certification. Practice requires uniformity and nationwide application. Proposed standards might result in a specialist in a sub-specialty but not in Admiralty. Standards must be enforced nationwide and uniformly or will mislead clients unfamiliar with practice of admiralty.
- 3 Blocker Denise S. Standards do not give proper weight to different areas of maritime law and indirectly but wrongly weigh their importance.
 Agrees with arguments put forth by the MLA and PAS. Standards are blatantly weighted to give maximum credit to plaintiffs maritime personal injury lawyers and fail to address many other areas. As a result, they are not drafted to help the public identify attorneys proficient in admiralty and maritime law. Believes it unlikely that she could amass enough points to qualify, especially as a defense lawyer.
- 4 Booth Forrest Not enough CLE available to comply with 45-hour requirement.
 My opposition to certification in California is much more to certification per se, and less to the specific proposal
 . . . [T]he field of admiralty and maritime law is too broad to be certified as a specialty No practitioner can be proficient in all areas of admiralty. Therefore certifying that a particular lawyer is competent in admiralty and maritime law, which implies that he or she is competent in all areas thereof, in fact would mislead the public
 On the other hand, [the proposed certification program . . . would unfairly penalize many very skilled maritime lawyers who have chosen to specialize in [a particular sub-specialty] while benefiting those . . . who have a more varied practice.
 . . . I have concern that if the various states . . . begin setting requirements and individually certifying admiralty as a specialty, they will do so pursuant to different standards and provisions, leading to a lack of uniformity
 . . . [T]his "solution" [to assisting the public in finding competent counsel] addresses a problem which does not exist. Corporations and other organizations which are regular users of the services of maritime lawyers . . . all have ready access to maritime lawyers. . . . Maritime employees . . . have their unions to represent and assist them, which in turn have long-standing relationships with specialty maritime personal injury lawyers. Finally, with today's almost universal access to the internet, performing a search for a maritime lawyer is not more difficult than typing those words in Google or Yahoo. . . .
 The revisions to the Standards fail to address any of the significant structural arguments that practicing maritime lawyers have to the proposal. They do not address how some two dozen areas of sub-specialty should be certified. If the BLS wishes to prevent false claims of "expertise," the revisions fail to do that. They also fail to address the fact that admiralty and maritime law is almost exclusively federal, and national if not international in its breadth and scope.
 Maritime lawyers already have a professional credential, the MLA's Proctor status. At least four years of experience and other criteria are required and it is flexible enough to accommodate admiralty's numerous practice areas.
 (Mr. Booth's letter attached letters and emails from 29 other attorneys opposing the proposed specialty, many of whom had already commented separately.)

Last Name **First Name** **MI** **Notes**

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Booth	Forrest		The proposal lacks widespread support. Standards are inequitable in that they 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.
3	Cefalu	Marc	T. See Booth 7/7/08 comment.
6	Chiles	Robert	C. Admiralty and maritime is a distinct area of law in which serious repercussions can result if the practitioner does not have adequate experience. Whether that fact alone justifies a specialization status is . . . arguable. . . . [T]he public has been well served by competent legal assistance in this area for many years without such certification.
			. . . [T]he purpose of certification . . . is to assist the public in identifying lawyers with particular skills in a specialized field. I do not believe that there are many California consumers who conclude that they need an admiralty and maritime law specialist [so] I question the need to certify [such] specialists.
			. . . it is most likely [members of the general public who are injured in a marine setting] who will have the greatest difficulty in locating a qualified practitioner. . . . I do not see how [the proposed] standards would meet or help address that need.
			. . . What is obvious to me is that this is an attempt by a group of individuals to obtain a certification in order to improve their marketing. I do not find that inappropriate, but I do find the standards that are being proposed have been carefully drafted to meet the needs of a very narrow constituency who do not necessarily have the skill or experience to hold themselves out as true maritime practitioners. . . .
			(See separate chart for summary of Mr. Chiles' specific concerns about the proposed standards.)
7	Cicala	Conte	C. Concur with positions of the MLA and PAS. There has been no methodical inquiry by the BLS as to whether a specialty is warranted or how it should manifest in a way that would serve consumers. Many of my peers would find obtaining certification a great challenge due to their client base and/or the current focus of their practice. How ironic that the collegial maritime bar would suddenly find itself split in half by an externally imposed, unnecessary and yet undeniably "official" set of rules.
8	Clack	Rex	M. Agrees with criticisms made by the MLA and PAS. There is also the question of whether such a specialty is needed, particularly in light of the role played by the MLA. It has long been recognized in the maritime bar that the MLA's Proctor status is a well earned recognition of expertise in admiralty and maritime law. The proposed specialty appears to emphasize the accumulation of points for a variety of tasks without a genuine reflection of what is truly required to be a maritime law specialist.
4	Coburn	Diana	J. . . . [T]he subject of maritime law is too broad and the actual practice is ordinarily too narrow for maritime law to be a single specialty. . . . [T]he proposed certification . . . is entirely unnecessary and does not serve the purposes of legal specialization in general. Such a certification program would have no practical effect because virtually all maritime clients are already quite experienced and sophisticated in their knowledge of how to identify competent counsel. Further, a certification program . . . would have no public benefit, because it would only serve to mislead uninformed clients rather than help them identify attorneys with competence in the particular area of maritime law.

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76	Coleman III	Charles	L.	Joins in the comments in opposition from Vafidis, Bems, the MLA, PAS, and the Graydon Staring article. Proposal is misconceived because (1) the practice area if federal and international without any CA nexus; (2) too many sub-areas; and (3) the vast majority of clients are sophisticated users of legal services. The current specialty areas have one or more of the following characteristics not shared by admiralty and maritime law: (1) most of the consumers are individuals or small businesses; (2) the areas of law are reasonably discrete so that expertise in the entire area of law is likely to be acquired by someone specializing in the area; (3) lawyers cannot competently practice in the area without being familiar with the specific features of CA law that govern that area. It appears that just about the only identifiable group of unsophisticated potential clients would be a handful of injured ferry or cruise ship passengers. If this is the perceived need, the only sensible solution would be to define the specialty much more narrowly, such as "Certified Maritime Personal Injury Lawyer."
77	Collier, Jr.	William	H.	The field of admiralty and maritime law is as broad and diversified as it is specialized and unique. . . . The sheer breadth of maritime law forces practitioners to specialize in just one or a few . . . specific areas. . . . As a result, the subject of maritime law is too broad, and the actual practice is ordinarily too narrow for maritime law to be a single specialty. Given that the field is so broad and that no attorney could possibly be well versed in all aspects of it, a "certification" in maritime law is more apt to mislead a potential client into believing that a particular attorney is experienced in the area relating to his or her claim. Consequently, a program of specialization in maritime law would have the perverse effect of misleading the public as to the competence of attorneys rather than ensuring it. . . . [A] certification program would have no practical effect because virtually all maritime clients are already quite experienced and sophisticated in their knowledge of how to identify competent counsel. To draft a new set of rules for such a specialty will do nothing to help the 99% of the marine industry which is already well represented by a highly competent bar. And it is likely to merely mislead the remaining 1% into believing they are in good hands with counsel whose real motivation for seeking specialization is to obtain a bar-sponsored means of self promotion.
78	Coniglio	Terry	J.	[C]reating such a "specialization" category will in fact mislead the consumer. . . . Stating that one is a specialist in "Admiralty and Maritime Law" would not ever really mean that such a member of the Bar would be competent to handle matters that arise under this overly broad category (Mr. Coniglio also points out practice areas omitted from the standards. See separate chart.)
79	Crawford	Courtney	M.	See Booth 7/7/08 comment.
80	Cummins	Michael	J.	Agrees with Sanchez letter on behalf of the PAS.
81	Donlon	Ryan	C.	The fact that the Federal Rules of Civil Procedure contains rules unique to admiralty does not inform the need for a state to regulate the practice. Creating standards on a state-by-state level is an unwelcome, and perhaps unconstitutional, interference with the uniformity of its substantive law and practice. This appears to be nothing more than a solution in search of a problem. The points system is convoluted. Some practice areas are weighed more favorably than others - filing a complaint is worth almost as much as trying a case!

- 16 Donovan Charles S. The practice of maritime law is inherently national and international. States have no business certifying "experts" in the field. . . . To the extent California purports to certify maritime law practitioners, it may actually violate the federal constitution.
... [C]ertification makes no practical sense. . . . In the three decades or so I've practiced maritime law, I've never heard any prospective client complain of trouble in finding a qualified maritime practitioner. The players in this area . . . are generally sophisticated in choosing legal counsel
... [T]he maritime practitioner invariably becomes a sub-specialist. . . . None of them claims a sweeping knowledge of the field of the type the proposed certification would require. . . .
- Donovan Charles S. The BLS should not attempt to re-jigger hours and credits. That won't improve what started out as a bad idea.
- 17 Downs Andrew B. The point scale is too heavily skewed towards tort litigation and lawyers who are maritime generalists. My substantive opposition is that maritime law is both a broad and a narrow field. It is narrow relative to the practice of law in general but encompasses a broad range of issues and situations. It is not like tax law or workers' compensation law where there is a very narrow well-defined area of practice. The proposal certifies the jack of all trades who is the master of none.
The Standards are skewed heavily towards personal injury and death practices as well as routine maritime lien practices. It undervalues marine insurance expertise and the attorney who succeeds in keeping clients out of court.
If the specialty is adopted, it should be rewritten from scratch to recognize that maritime law encompasses many different disciplines and that demonstrated skill in any of those disciplines is of equal value. The continuing education requirements also would need to be changed. As written now the primary qualifying programs are likely to be the Tulane Seminar, the Houston Seminar, the Maritime Law Association Meetings and the Pacific Admiralty Seminar, all worthwhile programs, but all ones that have almost no educational relevance to the marine insurance practitioner. I get far more valuable CLE from other sources that are not "educational activities specifically approved for Admiralty and Maritime law."
- 18 Edgington John A. . . . I oppose the proposed [certification] for all the reasons cited in the Pacific Admiralty Steering Committee letter and the following additional reasons.
... [T]he current proposal is too complex, does not have an appropriate grandfathering system and would not limit those certified to true maritime law experts. It is overly focused on litigation skills and substantially ignores the commercial and transactional side of the maritime practice. . . .
- Edgington John A. The revisions do nothing to address my concerns. A CA status is unnecessary because the MLA already has Proctor in Admiralty status available on a nationwide basis. The CLE requirements are totally unrealistic. The proposal only addresses claims oriented practitioners, totally ignoring the transactional and financing part of the practice, and is unreasonably skewed towards the personal injury and cargo claims practitioners.
- 19 Gibson Stanley L. . . . When the proposed specialty is defined so broadly that no practitioner can be a specialist in all of the areas, the public can easily be misled into believing a specialist in a particular area of maritime law is being retained when, in fact, that attorney may have no particular expertise in the required area As a result, [certification] is far more likely to mislead the public than to aid in the selection of competent counsel. . . .
There is also the aspect of the need for uniformity in the application and practice of maritime law which is primarily federal in nature. Having different states certifying a primarily federal practice based on separate state certification standards is not wise

Gibson Stanley L. There are glaring omissions of entire topics and underweighting of many others in comparison to the field of maritime personal injury, which is grossly overweighted in the proposed task requirements. (Mr. Gibson goes on to give numerous examples - see full text.)

Whether intended or not, the current requirements are a fast-track way for those practicing primarily in the maritime personal injury field to obtain certification as a maritime law specialist - an implied representation that they are experienced in all maritime law fields. Yet, this certification can be obtained without venturing outside the area of maritime personal injury law. Those who practice maritime law primarily in other fields have no such advantage. Their areas of practice are mostly ignored or carry little "weight" in terms of available "points" toward certification. The Board ought not favor one practice area over another when considering certifying a specialty that covers so many different and important sub-areas of unique law. At a minimum, the Board should require that ALL areas of maritime law be given equal weight in setting the requirements to achieve specialty certification. To this end, the Board should mandate that any "points" be awarded in a manner that requires experience in handling matters in each area. The current proposal falls far short of that goal.

20 Giffin John D. ... [B]ased upon the extremely broad nature of the practice of maritime law, I can see no reasonable way for the Board to develop an appropriate criteria for specialization in that practice area. I can see no benefit to the Bar, to our clients or to the community for establishing such a certification. . . .

(Mr. Giffin notes that he also adopts the text of the letter submitted by his colleagues - see comments submitted by members of the firm of Keesal, Young and Logan)

21 Gogerman Eugene Agrees with the comments of the MLA and PAS. The proposed standards are out of touch with the reality of admiralty practice and nearly insurmountable for practitioners seeking the specialty designation. They seem to be based on an arbitrary selection of topics and activities, one that is neither comprehensive nor representative of day-to-day practice.

There is no need for the specialty. Attorneys are already barred by ethical canons from holding themselves out as practitioners in a certain field unless they are qualified to do so. The maritime bar is small and the pool of potential clients in need of protection is limited. The proposed qualifications are onerous. There is a dearth of CLE. The required amount of litigation experience seems out of step with how few cases proceed to trial. A young associate starting in the maritime field has little chance of every being the principal attorney in an admiralty trial.

22 Graham Jeff P. The proposed standards are unfairly weighted in favor of maritime personal injury lawyers. As a young maritime defense attorney, they place myself and others like me in a highly disadvantageous position as there are no points awarded for answering or responding to a personal injury complaint. Impossible to satisfy the 45-hour CLE requirement in three years.

23 Hansen Rupert G. Maritime law is too broad to "master" even in a career. Certification would mislead the consumer into believing that the certified specialist is competent in all sub-areas. To say that the Committee is top-heavy in its weight given to (a) personal injury and death, and (b) cargo claims, is a gross understatement.

24 Huber Marisa A. Agrees with Sanchez comments. The specialty is not needed and the standards are poorly drafted.

25 Keesal, Jr. Samuel E. Agrees with William Collier's objections.

26 Kirsch Joshua Agrees with Sanchez comments. It is not needed, nor is the admiralty practice in CA growing, requiring a process to distinguish competent maritime attorneys. There must be at least some showing that the general public is unable to identify proficient maritime attorneys. The requirements should be evenly weighted - for example, they fail to award points for criminal matters and barely acknowledge marine insurance. As a result, consumers involved in a criminal maritime matter, those with a cargo loss, or those with a coverage dispute with a marine insurer would not benefit from certification.

As a practitioner of maritime law for 13 years, I would feel compelled to seek certification, although I would be reluctant to do so. Presumably, the BLS intends that attorneys like me seek certification, but if only a handful of attorneys do so, it would defeat the whole purpose of assisting the public.

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- 27 Leonard Arthur A. Initially, I am in favor of such a certification. (Note: Mr. Leonard subsequently changed his mind. See his second comment.)
- In general, I believe the proposed task requirements overlook a number of substantive admiralty and maritime practice areas, and as to the ones that are enumerated, the requirements may not be fairly weighted. . . [P]erhaps at least some points should be allowed for significant participation as a non-principal attorney.
- . . . [A] number of attorneys in the practice area tend to specialize in certain areas, such as personal injury or cargo loss or damage, and . . . the requirements as written wouldn't allow many attorneys to receive a certification, even though their practice was devoted entirely or nearly so to an area of admiralty and maritime law. However, I also recognize this may be the nature of specialization certification.
- (See separate chart for summary of Mr. Leonard's proposed revisions and concerns)
- Leonard Arthur A. After further consideration of the proposed certification, I am not in favor of it. I was initially in favor of the certification in principal, but did have serious concerns about the initially proposed standards for certification. The revised proposed standards have not fully addressed the concerns I initially had. Moreover, I am not now convinced that certification will assist the public, regardless of whatever the particular standards might be. I am concerned that the proposed certification, especially as now structured, will create more problems than it could ever address and have also been persuaded by the position of the MLA and the PAS.
- 28 Lindh Peter A. Agrees with Sanchez comments.
- 29 Liu Ailan . . . [T]he proposed certification . . . is unnecessary, and even potentially harmful to the public it purports to protect. . . .
- (Mr. Liu notes that he fully agrees with the opinions and comments expressed in William Collier's letter)
- 30 Morris Cheryl A. The criteria do not accurately reflect the broad reach of maritime practice and do not give appropriate credit for the handling of many complex admiralty matters. Certification is not necessary because the MLA already has designated a "Proctor" status. It will be superfluous if CA adopts the ABA model rules. The CLE requirements are onerous.
- 31 Nowell George W. Maritime law is international and national in nature. Exploring certification should involve working with the MLA, at least initially. A national component to any form of specialization program in admiralty would be beneficial, if not necessary, and could still allow a CA-focused component.
- 32 Paetzold Raymond M. Agrees with Sanchez, Underhill, Booth and Poulos comments.
- 33 Perovich Stefan See comments of other members of the Keesal, Young and Logan firm.
- 34 Piper Glen R. . . . [C]ertification may prevent attorneys from entering this diverse and interesting field of practice. Clients are likely to have a misplaced belief that maritime-certified attorneys are better suited to handle all legal issues relating to the industry and will not seek out or allow younger attorneys, which have yet to obtain the certification, to work on matters that they are otherwise well qualified to handle. [Certification] will likely prevent many attorneys from gaining experience in the maritime and admiralty field and may cause younger attorneys to turn or be turned away from the practice area before ever being exposed to it, thereby inhibiting the development of California's maritime legal community.
- (Mr. Piper's other comments reflect those received from members of the Keesal, Young and Logan firm)

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35	Poulos	Gregory	W. There is no logic behind the proposed point system. (See full text for examples.)
36	Robb	G.	Geoff. The proposal is an ill conceived idea that gives little or no consideration to the breadth of maritime law or the important role that certification of a specialty plays in the delivery of services to the public. Maritime law is not a single set of laws that one can specialize in. It is the law that serves an industry, not a subject. It would ill serve the public for the Board to certify a person who can draft a personal injury complaint while ignoring the fact that the client may need a cargo or collision specialist. Moreover, to adopt the illogical point system would only serve to create marketing opportunities for personal injury attorneys at the expense of the general public.
37	Russo	David	E. Agrees with Sanchez comments. See Clack comment.
38	Southwick	Joshua	A. Agrees with Sanchez comments.
39	Stecher	Christopher	A. See comment of William Collier.
40	Tamulski	James	J. The proposal is ridiculous. If the State Bar proceeds with it, it would be guilty of seriously misleading the public. To bless and sanctify some individual with the title of a maritime law specialist based upon the proposed criteria is a mockery of the entire certification process. If the proposed specialty is reflective of the other areas of certification, they are obviously all worthless. I would not be surprised to see the State Bar included as a defendant in malpractice cases brought against CA certified specialists.
41	Underhill	R.	Mike. The criteria and related point system appear not merely random but actually counter-intuitive and wrong. For example, the drafting of a personal injury complaint is worth an excessive number of points, despite the fact that those complaints tend in most cases to be "cookie-cutter" pleadings, while other aspects that are highly complex and require a great deal more work garner little to no points.
42	Vafidis	Matthew	P. The fundamental flaw is the lumping of the breadth of admiralty and maritime practice into a single basket. It would be like proposing certification for "federal law practice" or "state law practice." Few practitioners would profess to being experts in more than a handful of maritime subspecialties. The proposed certification has great potential to mislead prospective clients.
43	Vafidis	Matthew	P. See previous comment. Agrees with PAS position. I am concerned that the Board may be under a misapprehension, based in part on initial expressions of interest years ago, as to the degree of support for this proposal currently held by the Admiralty practitioners of the State Bar. . . . I am concerned about the mechanics of determining eligibility Such is reduced volume of maritime work currently practiced by even the most experienced and qualified admiralty practitioners that this proposal runs the risk of effectively excluding many of California's leading maritime lawyers from eligibility. Moreover, since the proposal lays emphasis on a range of admiralty experience rather than the degree of knowledge and expertise in the many sub-specializations of the practice, there is a risk . . . that eligibility will be granted to those with broad, generalized practices, but denied to those with specialist expertise.
43	Walsh II	Joseph	A. . . . [M]ost of [the proposal's] emphasis is on litigation. In this respect, the specifics for earning eligibility through litigation experience, which requires participation in a "potentially dispositive hearing or a trial" are problematic and may penalize the very finest and more specialized practitioners. . . . By categorizing litigation experience as only [those] matters . . . , eligibility for certification would, as a practical matter, be substantially limited and, contrary to the presumed purpose of the program, may therefore exclude the very lawyers the program should give certification: those handling the more complex and serious admiralty matters.
			I am concerned about why this program should be considered necessary. . . . [T]he number or proportion of the California public that is or may be involved in admiralty and maritime matters is relatively small. Of that group, the vast majority consist of those involved in the maritime industries Few, if any, of that majority is not able to identify and locate an experienced and California maritime lawyer. . . .
			See comment of William Collier.

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45	Yuan	Chelsea	D.	Agrees with Sanchez comments.
46	Zapf	Robert	J.	... Admiralty law practitioners are familiar with the substantive and procedural international and federal laws governing that practice and routinely appear on behalf of clients in numerous states around the country. It would ill behoove the practice and the practitioner to be subject to the vagaries of various state requirements for qualification or certification to practice in this area. ... If each such state adopted [its own] requirements, uniformity would be adversely affected on a large scale, to the confusion and detriment of the practice and of the interest of the clients we serve. ... [T]here are already in place nationwide standards governing and applicable to practitioners of admiralty and maritime law. The Maritime Law Association ... is an association ... consisting largely of attorneys ... who engage in the practice of admiralty and maritime law in various federal and state courts. ... [T]he MLA adopted a two tier system of attorney membership - Associate members and Proctor members. ... In order to qualify as a "Proctor" member, the MLA adopted [certain] requirements: [associate lawyer membership for at least four years; letters in support from at least two Proctor members in good standing, who are not associated with the applicant in the practice of law, stating that the applicant has demonstrated expertise in the practice area as well as high standards of ethical and professional conduct; 20 CLE credits]. ... Members with Proctor status are listed [on the MLA website]. Thus, clients and the public are easily capable of locating and ascertaining the qualification of admiralty and maritime law practitioners, without the necessity of checking different state rules and requirements for such qualifications and certifications.

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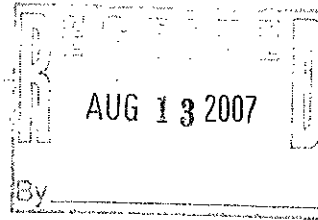
August 10, 2007

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Board of Legal Specialization
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Re: Proposed Admiralty and Maritime Law Specialty Certification

Dear Board Members:

I am writing to voice my objection to the proposed California State specialty certification in Admiralty / Maritime Law. Specifically, I believe that maritime law is ill suited for such a certification due to the field's numerous subcategories, including ship financing, U.S. Customs regulations, cargo, personal injury, pollution, recreational boating, etc. Each of those subcategories requires very specialized up to date knowledge that is not transferable to other subcategories.

In my opinion, someone with the necessary level of expertise in one category of maritime law would very likely lack sufficient exposure to effectively represent a client in other categories. Similarly, someone with a broad but superficial knowledge of each subcategory may not provide a client with adequate representation within a particular specialty field. One would hope that a maritime attorney with experience and knowledge in a specific subcategory would not feel qualified to jump into another maritime field without any experience in that other field, but I suspect that some may feel confident in doing so after becoming a "certified maritime attorney." Consequently, a certification from the California State Bar may in the end provide a false sense of security not only to the public, but also to its own members.

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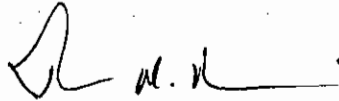
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Re: Proposed Admiralty and Maritime Law Specialty Certification

To the extent that the certification is meant to provide a means of directing members of the public to a list of qualified maritime attorneys, this could likely be better accomplished through local bar associations' admiralty groups (e.g. the Long Beach and San Francisco Bar Associations) after considering the facts of a particular case.

Thank you for allowing me the opportunity to voice my concerns.
Please let me know if you have any questions regarding any of the above.

Very truly yours,



Theodore H. Adkinson
ted.adkinson@kyl.com

THA: (KYL_LB1107630)

Philip A. Berns, Esq.
2607 Savannah Springs Ave.
Henderson, NV 89052

Admitted: NY and CA

Office: 702-361-9010
Fax: 702-897-1170
Mobile: 925-457-7966

March 1, 2008

For the Members of the State Bar of California Specialty Committee—

Re Designation of Admiralty as a Specialty

I am submitting this in opposition to the designation of Admiralty as a specialty under the terms of the proposals submitted by the *Ad Hoc* committee on the subject. This is not to be understood as a claim that admiralty is not a special area of law but that the proposals provide a well intended but insubstantial and inaccurate basis for bestowing “Admiralty Specialist” on applicants.

It must be remembered that unlike several other areas of law this practice requires uniformity and nationwide application. Unlike torts under state law a tort in admiralty must be a tort in all of the United States and applied the same and determined under the same rules and ramifications. Further, admiralty law is not only a body of law in itself (as will be shown below) with a myriad of specialties within a specialty but also requires the knowledge and application of other areas of “shorebound” law, criminal law, and how they may—or may not—apply in admiralty.

Writers Background

I was admitted to the practice of law in 1960 in New York and 1990 in California. From 1960 to 1977-8 I practiced admiralty law in New York in the Second, Third and First Circuits, and elsewhere in the country on special assignment, as an attorney with the U.S. Department of Justice, Admiralty and Shipping Section (later designated Torts Branch-Admiralty and Aviation). The last seven years or so I was the Assistant Attorney in Charge of the office—which consisted of five to eight attorneys at any given time.

During 1977-8 I transferred to San Francisco where I became Attorney in Charge of the West Coast Office—again with a staff of five to eight attorneys and responsible for all maritime cases within the jurisdiction of the Ninth Circuit, with more special assignments elsewhere.

Both periods of time also included matters within state courts—by Federal statute attorneys in the U.S. Department of Justice are permitted and authorized to represent the U.S. in all courts in the U.S. and its territories.

In 2005 I retired from the Department and am presently available as a consultant in admiralty matters.

From 1960 to 2005 I handled over 1,000 cases—and was responsible and participated at different levels of activity and review of cases handled by my staffs. As well as represented the U.S. Marshal Service in over 500 ship sales and other related maritime matters. Additionally I trained many agency attorneys in the area of law and have had many Coast Guard and Navy legal officers assigned to my offices for litigation training.

Further, I taught admiralty law as an adjunct professor over a ten year period at McGeorge School of Law, University of Pacific, lectured around the country, was an Associate Editor for American Maritime Cases and am now a consultant for AMC, as well as contributed to the volumes of Benedict's on Admiralty. I have been a member of the Maritime Law Association since 1964, active in committees, a member of the Board, and for the last six years an officer as Membership Secretary. As a member of MLA I was involved in the preparation of the first uniform set of Local Admiralty Rules for District Courts. I also was the Government's representative on the U.S. Supreme Court's Subcommittee on The Supplemental Admiralty Rules.

Specialty Within a Specialty

In 1960 when I began my career there were many shipping lines and many major law firms which engaged in admiralty as their primary practice. Those firms had different sections which specialized in specific areas of maritime law, e.g., cargo law, navigation and collisions, financial transactions, torts, etc. Due to the nature of the Department of Justice and the background of its admiralty attorneys, I was a graduate of New York State Maritime College (part of SUNY), had merchant marine deck mate's papers, and was a former naval officer, second in command of a sub-chaser, we would handle all of these fields. I handled cases in

Cargo law, including application of the Carriage of Goods By Sea Act and cargo handling and stowage

General Average (an "exotic" subdivision of cargo damage matters)

Marine insurance

Collision and grounding cases (requiring knowledge of navigation and the Rules of the Road—international and territorial waters and rivers—as well as chart making and usage)

Torts (Jones Act, Longshore and Harbor Workers Act, state and other Federal law application)

International Treaty Law

Death on the High Seas Act (including as applied to plane crashes and deaths)

Ship mortgage cases

Bankruptcy—involving maritime claims and priorities

Salvage cases

Oil Pollution matters

Constitutional law cases involving admiralty

Examples of cases I handled or was involved in which you may recognize are EXXON VALDEZ, ARGO MERCHANT, AMERICAN TRADER (ship pollution grounding off

Huntington Beach), BADGER STATE (23 deaths, 16 personal injury claims, ship loss, cargo loss), the hydrogen bomb salvage case off the coast of Spain, BROTHER JONATHAN (finally determined in the Supreme Court), THE TITANIC (input on issues of U.S. admiralty law versus interpretation of international law on salvage and jurisdiction of the U.S. courts), NORTHERN GULF.

Each of these is, as stated, a "specialty within a specialty".

Conclusion

For the above reasons I oppose the proposed designation of an Admiralty Specialist based on the requirements set out by the *Ad Hoc* committee. What they propose might (but even here I'm not convinced of it) result in a specialist in a sub-specialty but not in Admiralty!! That, and I again suggest, even the sub-specialties, demand a standard enforced nationwide and uniformly. Anything else would mislead some client unfamiliar with the practice of admiralty. As for those familiar with that practice, e.g., underwriters, they will not be misled, they will know it is a professional misnomer.

As for myself, at my age and status, I feel some despair—under the proposals, if adopted, I'm not sure I could qualify.

Respectfully submitted

s/

Philip A. Berns

Maynard, Lorna

From: PHILIP BERNS [pberns@embarqmail.com]
Sent: Tuesday, July 01, 2008 3:43 PM
To: Legal Specialists
Cc: MWYATT@WYATTLAW.US.COM; Jennifer Sanchez; PASSC@googlegroups.com; Charles Coleman; jsanchez@gibsonrobb.com; Matthew Vafidis; Forrest Booth; George Nowell
Subject: Specialization Proposals--Admiralty

I have reviewed the revised proposals for certifying Admiralty Law as a specialty and find that the changes still do not meet the issues that were previously raised by the San Francisco Bar Admiralty Section and the Maritime Law Association of the United States. Thus, I am again submitting my original comments opposing the proposals.

I have great respect for Marva Jo Wyatt and her committee but feel that the major problem with this approach is the failure to recognize the breadth of admiralty law and the difficulty of the designation of an attorney as a specialist therein. I also join in the submission of the Admiralty Section comments, particularly those relating to the proposals which do not give the proper weight to the different areas of law practiced in maritime law and indirectly but wrongly weigh their importance. Further, there is a continued failure to answer the important requirement of national uniformity in the practice.

I appreciate your consideration of my submission and, also, respectfully submit that the listing of the names of some of the supporters by the special committee is probably in error. As I understand it, many were people who were approached as to whether there should be a study of admiralty law as a specialty. Some indicated an interest solely in that phase--but did not say "yes or no"--and certainly did not indicate approval of a study and proposals which did not then exist.

Respectfully submitted,

Philip A. Berns

8/6/2008

LAW OFFICE OF DENISE SAVOIE BLOCKER
150 WILLOWBROOK DRIVE
PORTOLA VALLEY, CA 94028

August 6, 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:

This is a public comment against the proposed certification of a specialty for admiralty and maritime law in California.

I have been a member of the maritime bar for nearly 22 years. I am a member of the Maritime Law Association of the United States ("The MLA"), and a former Director on the MLA Board of Directors. I have also served as a member of the Pacific Admiralty Seminar ("PAS") Steering Committee. I wholeheartedly agree with the arguments *against* certification prepared by the MLA and the PAS. I do not believe that admiralty and maritime law is an area of the law appropriate for certification under any circumstances, and certainly not under the current proposal.

Over the past 22 years, I have gained extensive experience handling the defense of cargo cases, personal injury cases, and collision cases. While I originally handled nearly all aspects of maritime law while with a very large law firm, since opening up a solo practice in 1999, I have focused almost exclusively on the defense of personal injury and cargo matters. The proposed certification requirements are blatantly weighted to give maximum credit to plaintiff's maritime personal injury lawyers, and fail to address many other 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. I am confident that I am as experienced and proficient in the personal injury and cargo areas of maritime law as any of my colleagues in the maritime bar. I have had many of the same clients (major container shipping companies) for 22 years, and they certainly believe that I am "proficient" in handling these types of cases. However, under the proposed provisions, it is unlikely that I could amass enough "points" to qualify for certification, especially as a defense lawyer. Indeed, I suspect that even though most of my colleagues over the past twenty plus years

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could claim the equal "proficiency" in one, or two, or perhaps even four or five areas of maritime law, it is unlikely that they could qualify for this certification either.

Given that the requirements are so poorly drafted and many practice areas are ignored or not adequately addressed, I share the concern of my colleagues at the PAS and the MLA 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.

Further, the PAS is correct, in that 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. If enough CLE providers do come forward, I imagine there would be much duplication in 30 hours of CLE, as the maritime law is slow to change.

There is a maritime law symposium held biennially at Tulane University in New Orleans which provides 10 to 15 CLE units, which I have attended numerous times. I agree with the PAS that it would be unfair and frankly absurd if qualifying as certified California Legal Specialist required traveling to another state for legal education.

I also agree with the assessment that 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. Plus, the LLM lawyers are already able to distinguish themselves with their degree; they do not need the State Bar of California to provide them with an additional distinction.

Very truly yours,

Denise Savoie Blocker
California Bar No. 124155

Forrest Booth
Attorney
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& Werson**
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June 28, 2007

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

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 write to oppose the proposed specialty certification of admiralty and maritime law by the State Bar of California. I am writing on my own behalf and not on behalf of any organization.

QUALIFICATIONS AND EXPERIENCE

I have been a member of the California Bar and an admiralty lawyer for over 30 years. I have devoted my entire career to practicing in the areas which the proposed certification of admiralty and maritime law will cover. I have litigated numerous maritime cases in both the federal courts and California state courts, and have handled approximately 35 appeals in the Ninth Circuit, the California Courts of Appeal, the California Supreme Court, and the maritime case of *Saratoga Fishing v. J.M. Martinac & Co.* in the United States Supreme Court. I have handled cases involving personal injuries, stowaways, cargo theft and damage, tug and tow disputes and casualties, ship collisions and allisions, limitation of liability actions, marine insurance disputes, salvage and treasure salvage, maritime liens, shiprepair, charter parties and maritime regulatory matters. I have served as an expert witness on admiralty and maritime law and marine insurance on a number of occasions. I have also drafted bills of lading, contracts of private carriage, vessel charters and marine insurance policies.

I have lectured and taught on maritime law subjects on a number of occasions. I am a member of the Board of Advisors of the University of San Francisco *Maritime Law Journal*. I have several times been a speaker at the Pacific Admiralty Seminar in San Francisco, and I have also been a speaker at the Southeast Admiralty Law Institute in Savannah, Georgia, and the

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Page 2

Houston Marine Insurance Seminar in Houston, Texas. I serve as an Early Neutral Evaluator for maritime cases on the panel of the United States District Court for the Northern District of California. I have been a speaker on maritime law before the Law Society of British Columbia, and the International Energy Claims Adjusting Conference at Lillehammer, Norway. I have authored the following law review articles and chapters of books on maritime law and marine insurance:

- “‘Bad Faith’ - Legal Trends in Suits Against Insurers”, 4 U.S.F. Mar. L.J. 1 (1992);
- “Who Owns Sunken Treasure? The Supreme Court, The Abandoned Shipwreck Act and the BROTHER JONATHAN”, 11 U.S.F. Mar. L.J. 77 (1998);
- “Port and Maritime Security”, 15 U.S.F. Mar. L.J. 1 (2002);
- “The Collision of Property Rights and Cultural Heritage; The Salvors’ and Insurers’ Viewpoints”, published in Art and Cultural Heritage: Law, Policy and Practice (Barbara Hoffman ed., 2005).

I am the past Chair of the Pacific Admiralty Seminar, the past Chair of the Section of International Law and Practice, International Insurance Law Committee of the American Bar Association, a member of the Board of Marine Underwriters of San Francisco and the Association of Average Adjusters (UK).

OBJECTION TO CERTIFICATION *PER SE*

My opposition to certification in California is much more to certification *per se*, and less to the specific proposal upon which the Board is currently seeking comment. While I have several objections to the proposal currently under consideration, I believe that any form of certification is not appropriate with regard to admiralty and maritime law. I wish my comments and objections therefore to be understood as applying to **any** program which proposes to certify admiralty and maritime law, in the State of California or elsewhere. I urge the Board to follow the lead of the American Bar Association and every state (except Florida) which has considered this issue, and reject certification of maritime law.

COMMENTS

Based on my years of experience, it is my firm belief that the field of admiralty and maritime law is too broad to be certified as a specialty. While it contains all of the 14 substantive areas contained in the Definition paragraph (1.0) of The Standards for

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Certification and Recertification in Admiralty and Maritime Law (except for one, Piracy, which no lawyer can admit to practicing), it also includes many others which are not listed, including: United States Coast Guard, Department of Homeland Security, Federal Maritime Commission and Maritime Administration regulatory matters; stevedoring and terminal operations; marine ecology; protection of the marine environment; Outer Continental Shelf Lands Act matters; subsea production and transportation of oil and gas; maritime products liability; fisheries and fisheries' regulation; maritime fraud and crime; carrier security; international law of the sea and treaties; maritime bankruptcy; vessel classification and inspection issues; recreational boating; and maritime arbitration. Even this list, combined with that provided in paragraph 1.0, is neither definitive nor complete.

My understanding is that the purpose of certification is to help the public to identify lawyers who are proficient in a particular area of the law. No practitioner can be proficient in all areas of admiralty. Therefore certifying that a particular lawyer is competent in admiralty and maritime law, which implies that he or she is competent in all areas thereof, in fact would mislead the public. No maritime law practitioner is fully competent in even half of the areas encompassed by "admiralty law", and many of the most skilled and highly-respected maritime lawyers are specialized in only one or two of those categories.

On the other hand, any certification program which required a lawyer to demonstrate proficiency in a number of areas in order to qualify (which the proposal currently under consideration clearly does), would be discriminatory. It would unfairly penalize many very skilled maritime lawyers who have chosen to specialize in, for example, cargo subrogation cases, ship financing or maritime personal injury, while benefiting those (like me) who have a more varied practice.

Speaking personally, after what I believe is broad and comprehensive experience in the admiralty practice, I nevertheless would not feel competent to handle a maritime bankruptcy matter, or a proceeding before the U.S. Department of Labor in a matter involving a maritime employee. Likewise, I would not be competent to handle the financing of a new vessel construction or a loan syndication for a vessel or energy platform. Conversely, I would not expect a maritime lawyer who was competent in one of those areas to necessarily have expertise in all of the areas of maritime law in which I believe I am experienced.

As you may know, the United States Constitution in Article III, Section 2 grants admiralty and maritime jurisdiction to the federal courts of the United States, to ensure that cases falling thereunder are handled uniformly by the federal courts, regardless of where in the U.S. the matter may be pending. This is commonly referred to as the need for uniformity in admiralty. Maritime practice is largely national, not local; indeed, much of it is international. Most of the substantive law is federal and not state law. Federal admiralty law applies even in a case pending in a state court. I have concern that if the various states, including California, begin setting requirements and individually certifying admiralty as a specialty, they will do so pursuant

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to different standards and provisions, leading to a lack of uniformity and again, the possibility of misleading the public. Many maritime law practitioners are admitted in multiple jurisdictions, and essentially all of us have occasion at some point in time to practice in more than one state. See *The Proctor's Dilemma: Certifying Specialties in Admiralty*, 28 Journal of Maritime Law and Commerce 503 (1997), authored by noted San Francisco maritime lawyer Graydon Staring.

While it has been suggested that certification of admiralty lawyers will assist the public in finding competent legal counsel in their area, I firmly believe that this "solution" addresses a problem which does not exist. Corporations and other organizations which are regular users of the services of maritime lawyers, such as steamship companies, marine insurers, marine equipment manufacturers and banks, all have ready access to maritime lawyers with the skills which those clients need. Maritime employees, such as seamen, longshoremen and marine construction workers, have their unions to represent and assist them, which in turn have long-standing relationships with specialist maritime personal injury lawyers. Finally, with today's almost universal access to the Internet, performing a search for a maritime lawyer is no more difficult than typing those words into Google or Yahoo. It would be just as easy for a potential client in need of a maritime lawyer to search for local members of the Maritime Law Association of the United States or a local lawyer listing either admiralty, Proctor in Admiralty or maritime law on his or her website as it would to visit the State Bar's website. This is especially true because lawyers are already, in the absence of any state certification program, allowed to use the designation "Proctor in Admiralty" or "Admiralty" to describe themselves and their practice. Rule 7.4(c) of the ABA Model Rules of Professional Conduct states that "A lawyer engaged in Admiralty practice may use the designation 'Admiralty', 'Proctor in Admiralty', or a substantially similar designation." There is no guarantee that a search of any state bar's list of supposedly certified lawyers would disclose a local attorney with the skill set the potential client was looking for, whereas a lawyer's website likely would contain that information.

For the above reasons, I urge that the Board Members join the ABA and all but one other state and vote against certifying admiralty and maritime law as a specialty in the State of California.

Respectfully submitted,



Forrest Booth
California Bar No. 076144

FB:dhd

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Attorney
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A Professional Corporation

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May 27, 2008

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

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

Re: Opposition to Proposed Specialty Certification of Admiralty and Maritime Law

Dear Members of the Board of Legal Specialization:

I write to convey additional comments concerning my opposition to the proposal to certify admiralty and maritime law as a specialty of the California State Bar. In addition to conveying my own personal objection, as someone who has practiced admiralty and maritime law for 30 years, I also enclose the comments I have received from 29 other maritime lawyers who are members of the Bar of the State of California. Twenty-eight of those individuals oppose the proposed specialty in admiralty. The twenty-ninth individual was noncommittal in his comments, neither supporting the proposal nor objecting to it. Not a single comment in favor of the proposed specialty was received, in spite of the fact that Elizabeth L. Burrell, President of the Maritime Law Association of the United States (MLA), requested every California member of the MLA to submit his or her comments. I believe that the tenor of the responses received (97% opposed) indicate that those most directly concerned, namely practicing maritime lawyers, almost uniformly oppose the proposal.

I have reviewed the revisions to the Proposed Standards, and in my view they fail to address any of the significant, structural arguments which practicing maritime lawyers have to the proposal. The goal of the Board of Legal Specialization (BLS), as set forth in the Request for Additional Public Comment dated April 15, 2008, is to demonstrate that certain attorneys are proficient in a particular area of the law. The objection that practicing maritime lawyers (as opposed to teachers, and those who only occasionally handle a maritime case) have to the proposal is that admiralty is not "a particular area of law". It encompasses well over 20 separate areas of law. The Proposed Standards do not address, nor have the proponents ever suggested, how some two dozen areas of sub-specialty within admiralty should be certified, or possibly could be. If the BLS wishes to prevent false claims of "expertise" that will mislead the public (Request for Additional Public Comment dated April 15, 2008), the revised Proposed Standards

Board of Legal Specialization
May 27, 2008
Page 2

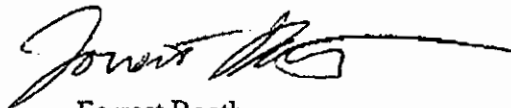
fail to accomplish that. A lawyer skilled in handling maritime personal injury cases would be just as incompetent to handle a ship financing or a Clean Water Act violation as would a bankruptcy or tax lawyer.

The revisions to the Proposed Standards also fail to address the fact that admiralty and maritime law is almost exclusively federal, and national if not international in its breadth and scope. Indeed, the major reason Ms. Wyatt cites in support of her advocating admiralty as a specialty is that the Federal Rules of Civil Procedure have separate Supplemental Rules for admiralty and maritime claims, and Rule 14(c) provides a "tender" procedure which is unique to admiralty. The federal rules, of course, apply nationwide, and have nothing unique to California.

Finally, the Proposed Standards ignore that maritime lawyers already have a professional credential that recognizes their proficiency in the field (Request for Additional Public Comment of April 15, 2008). The MLA has a Proctor Membership category, whereby experienced maritime practitioners apply for Proctor status, after satisfying the requirements and being recognized and recommended by two other Proctor members of the MLA who do not work with the applicant. At least 4 years of experience in admiralty and maritime law, and the meeting of several other criteria, are required before the applicant may apply. The procedure for promotion to Proctor status, which has been revised over the years, is deliberately flexible enough to accommodate the numerous areas of practice encompassed within admiralty, and also any state and regional variations in practice within the United States. It allows recognition of lawyers such as Professor Michael Sturley of the University of Texas School of Law and Frank Wiswall of Maine, whose maritime practices involve exclusively international treaty and international regulatory work, having nothing to do specifically with any one state of the U.S. Although they are among the most distinguished of maritime practitioners, their many years of practice (like mine) would nevertheless not qualify them under California's Proposed Standards.

For the above reasons, I, and the 28 individuals whose letters and emails I attach, continue to oppose the certification of admiralty and maritime law as a specialty in California. Thank you for your consideration.

Very truly yours,



Forrest Booth
California Bar No. 076144

FB:dhd
Attachments

Forrest Booth

From: Stan Gibson [sgibson@gibsonrobb.com]
Sent: Thursday, March 06, 2008 11:46 AM
To: Forrest Booth
Subject: Admiralty specialization as currently proposed.

As you know, I am against the proposed specialty.

Best regards,

Stan

1

Forrest Booth

From: Peter Lindh [plindh@gibsonrobb.com]
Sent: Wednesday, March 05, 2008 12:12 PM
To: Forrest Booth
Subject: California State Bar Admiralty Certification

Forrest. I am against the proposed certification for cost reasons and the reasons expressed by Liz Burrell.

Peter A. Lindh
Gibson Robb & Lindh LLP
100 First Street, 27th Floor
San Francisco CA 94105
Direct Dial: (415) 979-2340
Fax: (415) 348-6001
email: plindh@gibsonrobb.com

2.

Forrest Booth

From: Kaufman-Cohen, Eric (CIV) [Eric.Kaufman-Cohen@usdoj.gov]
Sent: Wednesday, February 20, 2008 9:35 AM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Forrest:

As a member of the MLA, as well as a long standing member of the Steering Committee of the PAL, I am opposed to the proposal to certify Admiralty law as a specialty in California.

Eric Kaufman-Cohen
Trial Attorney
U.S. Department of Justice
Torts Branch (Admiralty)
Tel: (415) 436-6647
Fax: (415) 436-6632
eric.kaufman-cohen@usdoj.gov

From: PASSC@googlegroups.com [mailto:PASSC@googlegroups.com] **On Behalf Of** Forrest Booth
Sent: Tuesday, February 19, 2008 4:46 PM
To: Forrest Booth
Cc: PAS Steering Committee
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear All:

Those of you who are members of the MLA received an emailed letter from President Liz Burrell, asking you to please send to me, in writing (email is fine), your views on the State Bar's proposal to certify Admiralty law as a specialty. The MLA opposes certification.

If you have not sent me your views, one way or the other, please do so. You can reply to me on this email, but please do not "Reply to All".

Many thanks.

Forrest.

You received this message because you are subscribed to the Google Groups "Pacific Admiralty Seminar Steering Committee" group.

To post to this group, send email to PASSC@googlegroups.com

To unsubscribe from this group, send email to PASSC-unsubscribe@googlegroups.com

For more options, visit this group at <http://groups.google.com/group/PASSC?hl=en>

3

Forrest Booth

From: Marisa Huber [mhuber@gibsonrobb.com]
Sent: Wednesday, March 05, 2008 12:41 PM
To: Forrest Booth
Subject: Maritime Specialty Certification

Hello Forrest,

I'm writing in response to Liz Burrell's letter that was sent to the PAS Committee. I do not support the proposed maritime specialty certification. I look forward to seeing you at our meeting later this month.

Marisa G. Huber

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San Francisco, CA 94105
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Dir.: (415) 979-2344
Fax: (415) 348-6001

4.

Forrest Booth

From: Matthew.Vafidis@hklaw.com
Sent: Wednesday, February 20, 2008 8:57 AM
To: Forrest Booth
Cc: PASSC@googlegroups.com
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Forrest, I am happy to enclose my letter to the Bar sent in August last year; I hope I sounded sufficiently full of myself and indignant. Best regards, Matthew

Matthew P. Vafidis
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
Phone: (415) 743-6950
Fax: (415) 743-6910
Cell: (510) 366-4449

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From: PASSC@googlegroups.com [mailto:PASSC@googlegroups.com] **On Behalf Of** Forrest Booth
Sent: Tuesday, February 19, 2008 4:46 PM
To: Forrest Booth
Cc: PAS Steering Committee
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear All:
Those of you who are members of the MLA received an emailed letter from President Liz Burrell, asking you to please send to me, in writing (email is fine), your views on the State Bar's proposal to certify Admiralty law as a specialty. The MLA opposes certification.

If you have not sent me your views, one way or the other, please do so. You can reply to me on this email, but please do not "Reply to All".

Many thanks.

Forrest.

You received this message because you are subscribed to the Google Groups "Pacific Admiralty Seminar Steering Committee" group.

To post to this group, send email to PASSC@googlegroups.com
To unsubscribe from this group, send email to PASSC-unsubscribe@googlegroups.com
For more options, visit this group at <http://groups.google.com/group/PASSC?hl=en>

5.

August 3, 2007

Matthew P. Vafidis
415 743 6950
mvafidis@hklaw.com

Board of Legal Specialization
State Bar of California
180 Howard Street
San Francisco, California 94105-1639

Re: Admiralty and Maritime Law
Proposed Legal Certification

To the Board:

I write as a member of the California Bar to express my objection to the proposal to establish a California specialty certification for admiralty and maritime law. I am a partner in the law firm Holland & Knight LLP. My comments herein are made as a member of the Bar and are not to be construed as expressing the opinion of my Firm or, necessarily, of any other of its members, associates or professionals.

Qualifications

In addition to being a member of the California Bar, I am a member of the Bar of England & Wales, having graduated from Cambridge University in 1978 with a Master of Arts degree, and the Inns of Court School of Law in 1979. I have practiced law in San Francisco since April 1981, specializing in admiralty and maritime law. Prior to my being a partner with Holland & Knight, I was a partner with the internationally renowned maritime firm of Haight, Gardner, Poor & Havens, and prior to that I was a partner at Lillick & Charles, San Francisco, at that time one of the premier U.S. maritime firms. For the past 25 years, I have been a member of the Maritime Law Association of the United States, and have served on its Hazardous and Noxious Substances Sub-Committee. I am a past Chairperson of the American Bar Association Young Lawyer's Division Admiralty Committee and a past Chairperson of the San Francisco Bar Association Barrister's Club Admiralty Committee. I have served for over 20 years as a Committee Member of the Pacific Admiralty Seminar, a section of the San Francisco Bar Association, and was Chairperson of the Seminar in 1994. At the request of the Chief Judge, I served on the Local Admiralty Rules Advisory Committee for the United States District Court for the Northern California. I serve on the District Court's Alternative Dispute Resolution panel, primarily mediating admiralty cases, and act as both a mediator and arbitrator for such cases.

California Board of Legal Specialization
August 3, 2007
Page 2

I have authored numerous articles and papers, and lectured in California and throughout the world on various aspects of admiralty and maritime law, especially concerning oil and air pollution, the carriage of goods by sea and maritime arbitration. I am listed in Chambers USA as one of America's leading lawyers for business specializing in admiralty and maritime law; I am also listed as an admiralty lawyer in the publications Best Lawyers in America, Northern California Super Lawyers and the International Who's Who of Shipping and Maritime Lawyers. I have handled several hundred admiralty and maritime cases in my career, and would, I think, be considered to be one of the leading maritime specialists in the country in the areas of marine oil pollution and the carriage of goods by sea.

Comments Regarding the Proposal

I have two main criticisms of the proposal. The first is that it could well operate in such a way as to exclude from eligibility many of the finest admiralty and maritime lawyers in California. The second is that I question the need for or efficacy of the proposal.

(a) Eligibility Requirements

With respect to the proposal itself, it not clear to me how it might operate in practice, but, based on my experience and perception the Admiralty Bar, I perceive it may have serious flaws. I am concerned about the mechanics of determining eligibility by totaling up, through the points system, particular types of admiralty experience gained over a recent period of time. Such is the reduced volume of maritime work currently practiced by even the most experienced and qualified admiralty practitioners that this proposal runs the risk of effectively excluding many of California's leading maritime lawyers from eligibility. Moreover, since the proposal lays emphasis on a range of admiralty experience rather than the degree of knowledge and expertise in the many sub-specializations of the practice, there is a risk, I believe, that eligibility will be granted to those with broad, generalized practices, but denied to those with specialist expertise.

While the proposal would take into consideration non-litigation experience, most of its emphasis is on litigation. In this respect, the specifics for earning eligibility through litigation experience, which require participation in a "potentially dispositive hearing or a trial" are problematic and may penalize the very finest and more specialized practitioners. Most admiralty matters, as they are practiced by the California admiralty bar, particularly those matters that are more complex and involve more significant issues and amounts in controversy, tend to be resolved through the productive efforts of highly skilled, knowledgeable admiralty practitioners, without trial and without "dispositive hearing." This is the very sort of experience and practice that should be recognized by the certification requirement, but is not recognized, at least not directly. By categorizing litigation experience as only matters involving a "dispositive hearing" or trial, eligibility for certification would, as a practical matter, be substantially limited and, contrary to the presumed purpose of the program, may therefore exclude the very lawyers to which the program should give certification: those handling the more complex and serious admiralty matters.

(b) Need and Efficacy

Above all, I am concerned about why this program should be considered necessary. Unless it can be shown that a substantial section of that portion of the California public that has a need for representation by admiralty and maritime specialists is not currently being adequately served by the Bar, I question the need for this proposal. I sincerely doubt that such a showing could be made or has been found to be likely, let alone probable.

Based on my experience over my years of practice, I believe that the number or proportion of the California public that is or may be involved in admiralty and maritime matters is relatively small. Of that group, the vast majority consist of those involved in the maritime industries, as workers, ship owners, operators, and managers, suppliers and specialist support industries, and insurers. Few, if any, of that majority are not able to identify and locate an experienced California maritime lawyer. We are a relatively small admiralty bar, well known to one another, and to the maritime industry, in California, throughout the United States and abroad. While it is certainly conceivable that there might come a time when a member of the California public not otherwise involved in the maritime industry may need a maritime lawyer, there is no indication that he or she would not be able, without such a specialist certification program, to conduct the research in order to locate and contact an experienced maritime lawyer in California.

I have not addressed the more academic and far reaching implications involved in this proposal because those have been well stated elsewhere. I commend to the Board the enclosed article by Graydon Staring, probably the leading admiralty lawyer of his generation, who has expressed these issues more eloquently than I could do. Admiralty law is a specialist federal practice already, with a well-established national professional association, in the form of the Maritime Law Association of the United States, dedicated to maintaining professional and educational standards and expertise.

I hope that the Board considers my comments and that it rejects this proposal.

Sincerely,

Matthew P. Vafidis

MPV:mpv

4713190_v1

Forrest Booth

From: Shaul Serban [s-serban@gibsonrobb.com]
Sent: Wednesday, March 05, 2008 12:01 PM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear Forrest,

I am against State Bar certification.

Very truly yours,

Shaul Serban
GIBSON ROBB & LINDH LLP
100 First Street, 27th Floor
San Francisco, CA 94105
Main: 415.348.6000
Fax: 415.348.6001
Dir: 415.979.2336

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From: PASSC@googlegroups.com [mailto:PASSC@googlegroups.com] **On Behalf Of** Forrest Booth
Sent: Tuesday, February 19, 2008 4:46 PM
To: Forrest Booth
Cc: PAS Steering Committee
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear All:

Those of you who are members of the MLA received an emailed letter from President Liz Burrell, asking you to please send to me, in writing (email is fine), your views on the State Bar's proposal to certify Admiralty law as a specialty. The MLA opposes certification.

If you have not sent me your views, one way or the other, please do so. You can reply to me on this email, but please do not "Reply to All".

Many thanks.

Forrest.

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3/5/2008

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Forrest Booth

From: Frank Anders [FAnders@braytonlaw.com]
Sent: Wednesday, February 20, 2008 8:25 AM
To: Forrest Booth <fb@severson.com>
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Forrest,

I oppose certification. I agree with the MLA's position that certification is unnecessary because, unlike other areas of law, the maritime legal community does not require separate certification to inform individuals and corporations of where to locate competent maritime attorneys. I also agree that having separate maritime standards for certification in California may pose a threat to uniformity. Uniformity is important since a large portion of maritime law is practiced in Federal courts.

Very truly yours,
Frank Anders

 **Think Green!** Before printing this e-mail ask the question, is it necessary?

>>> <fb@severson.com> 2/20/2008 7:39 AM >>>

Dear All:

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Many thanks.

Forrest.

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7.

Forrest Booth

From: Joshua E. Kirsch [jkirsch@gibsonrobb.com]
Sent: Wednesday, March 05, 2008 12:00 PM
To: Forrest Booth
Subject: Cal Bar admiralty certification

Forrest,

I'm against making admiralty/maritime law a bar-certified specialty. It is too broad of a topic for meaningful certification, and is not necessary or helpful to the public.

Thanks and regards,

Joshua Kirsch
GIBSON ROBB & LINDH LLP
100 First Street, 27th Floor
San Francisco, CA 94105
Main: (415) 348-6000
Fax: (415) 348-6001
Direct: (415) 979-2323

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message
Forrest Booth

From: Mark de Langis [mdelangis@lucasvalleylaw.com]
Sent: Tuesday, February 19, 2008 9:56 PM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear Forrest,
I oppose the proposed specialty certification for the reasons stated by the MLA.
Regards,
Mark

Mark K. de Langis
Lucas Valley Law
2110 Elderberry Lane
San Rafael, CA 94903

tel: 415.472.3892
fax: 415.472.3977

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From: PASSC@googlegroups.com [mailto:PASSC@googlegroups.com] **On Behalf Of** Forrest Booth
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Forrest.

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9.

Philip A. Berns, Esq.
2607 Savannah Springs Ave.
Henderson, NV 89052

Admitted: NY and CA

Office: 702-361-9010
Fax: 702-897-1170
Mobile: 925-457-7966

March 1, 2008

For the Members of the State Bar of California Specialty Committee---

Re Designation of Admiralty as a Specialty

I am submitting this in opposition to the designation of Admiralty as a specialty under the terms of the proposals submitted by the *Ad Hoc* committee on the subject. This is not to be understood as a claim that admiralty is not a special area of law but that the proposals provide a well intended but insubstantial and inaccurate basis for bestowing "Admiralty Specialist" on applicants.

It must be remembered that unlike several other areas of law this practice requires uniformity and nationwide application. Unlike torts under state law a tort in admiralty must be a tort in all of the United States and applied the same and determined under the same rules and ramifications. Further, admiralty law is not only a body of law in itself (as will be shown below) with a myriad of specialties within a specialty but also requires the knowledge and application of other areas of "shorebound" law, criminal law, and how they may—or may not—apply in admiralty.

Writers Background

I was admitted to the practice of law in 1960 in New York and 1990 in California. From 1960 to 1977-8 I practiced admiralty law in New York in the Second, Third and First Circuits, and elsewhere in the country on special assignment, as an attorney with the U.S. Department of Justice, Admiralty and Shipping Section (later designated Torts Branch-Admiralty and Aviation). The last seven years or so I was the Assistant Attorney in Charge of the office—which consisted of five to eight attorneys at any given time.

During 1977-8 I transferred to San Francisco where I became Attorney in Charge of the West Coast Office—again with a staff of five to eight attorneys and responsible for all maritime cases within the jurisdiction of the Ninth Circuit, with more special assignments elsewhere.

Both periods of time also included matters within state courts—by Federal statute attorneys in the U.S. Department of Justice are permitted and authorized to represent the U.S. in all courts in the U.S. and its territories.

In 2005 I retired from the Department and am presently available as a consultant in admiralty matters.

From 1960 to 2005 I handled over 1,000 cases—and was responsible and participated at different levels of activity and review of cases handled by my staffs. As well as represented the U.S. Marshal Service in over 500 ship sales and other related maritime matters. Additionally I trained many agency attorneys in the area of law and have had many Coast Guard and Navy legal officers assigned to my offices for litigation training.

Further, I taught admiralty law as an adjunct professor over a ten year period at McGeorge School of Law, University of Pacific, lectured around the country, was an Associate Editor for American Maritime Cases and am now a consultant for AMC, as well as contributed to the volumes of Benedict's on Admiralty. I have been a member of the Maritime Law Association since 1964, active in committees, a member of the Board, and for the last six years an officer as Membership Secretary. As a member of MLA I was involved in the preparation of the first uniform set of Local Admiralty Rules for District Courts. I also was the Government's representative on the U.S. Supreme Court's Subcommittee on The Supplemental Admiralty Rules.

Specialty Within a Specialty

In 1960 when I began my career there were many shipping lines and many major law firms which engaged in admiralty as their primary practice. Those firms had different sections which specialized in specific areas of maritime law, e.g., cargo law, navigation and collisions, financial transactions, torts, etc. Due to the nature of the Department of Justice and the background of its admiralty attorneys, I was a graduate of New York State Maritime College (part of SUNY), had merchant marine deck mate's papers, and was a former naval officer, second in command of a sub-chaser, we would handle all of these fields. I handled cases in

Cargo law, including application of the Carriage of Goods By Sea Act and cargo handling and stowage

General Average (an "exotic" subdivision of cargo damage matters)

Marine insurance

Collision and grounding cases (requiring knowledge of navigation and the Rules of the Road—international and territorial waters and rivers—as well as chart making and usage)

Torts (Jones Act, Longshore and Harbor Workers Act, state and other Federal law application)

International Treaty Law

Death on the High Seas Act (including as applied to plane crashes and deaths)

Ship mortgage cases

Bankruptcy—involving maritime claims and priorities

Salvage cases

Oil Pollution matters

Constitutional law cases involving admiralty

Examples of cases I handled or was involved in which you may recognize are EXXON VALDEZ, ARGO MERCHANT, AMERICAN TRADER (ship pollution grounding off

Huntington Beach), BADGER STATE (23 deaths, 16 personal injury claims, ship loss, cargo loss), the hydrogen bomb salvage case off the coast of Spain, BROTHER JONATHAN (finally determined in the Supreme Court), THE TITANIC (input on issues of U.S. admiralty law versus interpretation of international law on salvage and jurisdiction of the U.S. courts), NORTHERN GULF.

Each of these is, as stated, a "specialty within a specialty".

Conclusion

For the above reasons I oppose the proposed designation of an Admiralty Specialist based on the requirements set out by the *Ad Hoc* committee. What they propose might (but even here I'm not convinced of it) result in a specialist in a sub-specialty but not in Admiralty!! That, and I again suggest, even the sub-specialties, demand a standard enforced nationwide and uniformly. Anything else would mislead some client unfamiliar with the practice of admiralty. As for those familiar with that practice, e.g., underwriters, they will not be misled, they will know it is a professional misnomer.

As for myself, at my age and status, I feel some despair--under the proposals, if adopted, I'm not sure I could qualify.

Respectfully submitted

s/

Philip A. Berns

Forrest Booth

From: Charles Donovan [CDonovan@sheppardmullin.com]
Sent: Tuesday, February 19, 2008 7:09 PM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Forrest -

Believe you have my views, which I've sent to the State Bar. Let me know if you need another copy.

Best,
Charley

Sent by Good Messaging (www.good.com)

-----Original Message-----

From: Forrest Booth [mailto:fb@severson.com]
Sent: Tuesday, February 19, 2008 04:43 PM Pacific Standard Time
To: Forrest Booth
Cc: PAS Steering Committee
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear All:

Those of you who are members of the MLA received an emailed letter from President Liz Burrell, asking you to please send to me, in writing (email is fine), your views on the State Bar's proposal to certify Admiralty law as a specialty. The MLA opposes certification.

If you have not sent me your views, one way or the other, please do so. You can reply to me on this email, but please do not "Reply to All".

Many thanks.

Forrest.

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 <p>SHEPPARD MULLIN ATTORNEYS AT LAW</p>	<p>Four Embarcadero Center 17th Floor San Francisco, CA 94111-4109 415.434.9100 office 415.434.3947 fax www.sheppardmullin.com</p>
<p>Charles Donovan Partner 415.774.2994 direct 415.403.6009 direct fax</p>	

11.



17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4109
415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

Writer's Direct Line: 415-774-2994
cdonovan@sheppardmullin.com

Our File Number: 0004-090009

July 25, 2007

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 Board Members:

I write in opposition to the proposal for a State Bar-certified specialization in Admiralty and Maritime Law.

I have been an admiralty practitioner for just shy of 30 years. I have served as Chair of the Admiralty and Maritime Law Committee of the American Bar Association's Tort and Insurance Practice Section. I am presently Chair of the Marine Finance Subcommittee of the ABA's Business Law Section, Commercial Financial Services Committee. I am a member of the adjunct faculty of the University of Southern California Law School, where I teach a course in admiralty.

The practice of maritime law is inherently national and international. States have no business certifying "experts" in the field. "[N]o [state] legislation is valid if it . . . works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." Southern Pacific Co. v. Jensen, 244 U.S. 205, 216 (1917). To the extent California purports to certify maritime law practitioners, it may actually violate the federal constitution.

Even if it doesn't, certification makes no practical sense. This is a solution looking for a problem. In the three decades or so I've practiced maritime law, I've never heard any prospective client complain of trouble in finding a qualified maritime practitioner. The players in this area – seamen, longshore workers, steamship lines, cargo interests, vessel owners and charterers, banks, suppliers to ships, marine construction companies, marine insurers – are

SHEPARD MULLIN RICHTER & HAMPTON LLP

Board of Legal Specialization

July 25, 2007

Page 2

generally sophisticated in choosing legal counsel or, in the case of maritime workers, have easy access to that sophistication through unions and other organizations to which they belong.

Admiralty jurisdiction extends to three quarters of the Earth's surface and encompasses many disparate legal disciplines. Every type of legal problem a landlubber encounters can arise in admiralty – except for probate and family law. Thus, the maritime practitioner invariably becomes a sub-specialist. There are cargo lawyers, personal injury specialists (plaintiff and defense), marine finance counsel, maritime environmental attorneys. The list goes on and on. None of them claims a sweeping knowledge of the field of the type the proposed certification would require. Each is, nonetheless, a specialist in an aspect of admiralty.

I urge you not to adopt State Bar certification for admiralty and maritime practice. The State shouldn't do it. The public doesn't need it.

The views this letter expresses are my own and do not necessarily reflect the views of my firm or the University of Southern California.

Thank you.

Very truly yours,

(Signed)

Charles S. Donovan

Forrest Booth

From: Harvey Wittenberg [wittlaw07@sbcglobal.net]
Sent: Wednesday, February 20, 2008 12:37 PM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear Forrest. I am writing to express my opposition to the California State Bar's attempt and proposed regulations to make admiralty-maritime law a legal specialization. I have been practicing in this area of law for almost 42 years and have represented clients in matters in almost every aspect of this area of the law, but under the proposed regulations to make this area of law a legal specialization, I would not qualify as a specialists. Based on my experience I find the proposed regulations are not realistic. Thank you for considering my opinion.

Forrest Booth <fb@severson.com> wrote:

Harvey:

Yes, please send me a brief email stating that you oppose. I want to tally up the responses to Liz' email when we next get the chance to make public comments to the Bar committee.

Many thanks.

Forrest.

-----Original Message-----

From: Harvey Wittenberg [mailto:wittlaw07@sbcglobal.net]
Sent: Wednesday, February 20, 2008 9:58 AM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

Forrest, I do not recall receiving any email from Liz but I did attend, along with you and Jennifer and Stan, and speak at the Oakland Airport Hilton meeting of the State Bar Committee considering specialization. I do not recall sending any email to either you or Liz stating my opposition to the then proposed rules. Please let me know if I should send you an email to that effect. Also, I would be willing to attend another meeting of the State Bar Committee to

express my views. Thanks.

Forrest Booth <fb@severson.com> wrote:

Dear All:

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If you have not sent me your views, one way or the other, please do so. You can reply to me on this email, but please do not "Reply to All".

Many thanks.

Forrest.

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For more options, visit this group at <http://groups.google.com/group/PASSC?hl=en>

Forrest Booth

From: Contè Cicala [contec@fdw-law.com]
Sent: Tuesday, February 19, 2008 4:52 PM
To: Forrest Booth
Subject: RE: Admiralty and Maritime Law - Proposed Specialty Certification

I oppose certification as a general matter, and in the specific form that has been proposed, for reasons previously submitted to the California State Bar on behalf of the PAS Steering Committee.

Conte C. Cicala
Flynn, Delich & Wise LLP
One California Street, Suite 350
San Francisco, CA 94111
Phone: (415) 693-5562 (direct)
Phone: (415) 693-5566 (main)
Phone: (415) 606-1371 (mobile)
Fax: (415) 693-0410
Website: www.fdw-law.com

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Forrest.

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For more options, visit this group at <http://groups.google.com/group/PASSC?hl=en>

Forrest Booth

From: Gardener, Kelli [Kelli.Gardener@kyl.com] on behalf of Keesal, Skip [Skip.Keesal@kyl.com]
Sent: Thursday, February 14, 2008 12:51 PM
To: Forrest Booth
Subject: FW: Message from MLA President Burrell

Dear Forrest,
I am writing to confirm my opposition to State Bar certification of Admiralty Law. Having said that, I hope all is well with you. I look forward to seeing you again soon.
Best regards,
Skip

From: MLAus [mailto:mlaus@callpcsolutions.com]
Sent: Thursday, January 24, 2008 5:48 PM
To: MLA CA Members
Subject: Message from MLA President Burrell

Good day Members,

I attach a message from President Burrell.

Have a nice day,

Robin Becker
Administrator

14.

Forrest Booth

From: Ryan C. Donlon
Sent: Friday, February 01, 2008 11:16 AM
To: Forrest Booth
Subject: Opposition to Proposed CalBar Admiralty Certification

Dear Forrest,

Please register my opposition to the proposed admiralty certification by the State Bar of California Board of Legal Specialization. Certification is not just unnecessary, it would be damaging to the profession where national uniformity is prized.

Thank you for your attention to this matter, and for your service to the Maritime Law Assoc of the U.S.

Very truly yours,

Ryan Donlon

Ryan C. Donlon
Severson & Werson
One Embarcadero Center, 26th Floor
San Francisco, CA 94111
(415) 398-3344
www.severson.com

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15.

Forrest Booth

From: Thames, Jonathan W. [jthames@archernorris.com]
Sent: Tuesday, January 29, 2008 9:39 AM
To: Forrest Booth
Subject: FW: Message from MLA President Burrell

Dear Forrest--

I am totally in line w/ the MLA on this. The Bar allows us to denote status as a Proctor in Admiralty per the MLA certification, so there's no need for a state-specific certification, too. Please let me know if you need assistance from me.

Very truly yours,

Jonathan W. Thames, Esq.
Admitted to practice in California,
Washington, Louisiana and Mississippi
ARCHER NORRIS
2033 North Main Street, Suite 800
Walnut Creek, CA 94596-3728
925.930.6600
925.952.5535 (Direct)
925.930.6620 (Fax)
jthames@archernorris.com
www.archernorris.com

From: MLAus [mailto:mlaus@callpcsolutions.com]
Sent: Thursday, January 24, 2008 5:58 PM
To: MLA CA Members
Subject: Message from MLA President Burrell

Good day Members,

I attach a message from President Burrell.

Have a nice day,

Robin Becker
Administrator

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16,

1/29/2008

STOLPMAN • KRISMAN • ELBER & SILVER LLP

ATTORNEYS AT LAW • PROCTORS IN ADMIRALTY

February 4, 2008

RECEIVED

Forrest Booth, Esq.
Severson & Werson
One Embarcadero Center, 26th Floor
San Francisco, CA 94111

FEB - 7 2008

SEVERSON & WERSON

Re: Proposed Certification of Maritime Lawyers by the State Bar of California

Dear Mr. Booth:

As you may know, I have been practicing plaintiffs' maritime personal injury law for almost 32 years. I am very familiar with the maritime practice in both state and federal courts.

As a Past President of the State Bar of California, I am familiar with the work of the State Bar, and I am also familiar with many of the certified specialist programs administered by the Bar. Since I no longer keep my certification active with the National Board of Trial Advocacy, I am no longer entitled to refer to myself by virtue of that accomplishment.

I have reviewed the proposed rules which have been developed. I oppose the project for the following reasons:

1. Maritime law is a field which consists of multiple sub-specialties, most of which have little to do with each other. For example, my practice primarily involves working with lawyers who have been retained to defend shipping companies, maritime construction firms, and other defendants in a maritime context for cases arising out of personal injuries or wrongful death. I know little about cargo claims, negotiating charters for vessels, the detailed world of marine insurance, maritime financing and many other areas in which maritime lawyers work. As is demonstrated by the proposed rules, attempting to encompass all of these various practice areas makes the rules extremely complicated and cumbersome, creating more problems and ambiguities than they resolve. (Although, I oppose the rules, I applaud those who have put in the incredible amounts of time which has been necessary to develop and revise the rules!)
2. Almost all consumers of maritime legal services are sophisticated clients for whom the certification program would be essentially meaningless. The only clients who could potentially benefit from having the certified specialist available to them as consumer information would be clients or potential clients who have had little to do with the legal profession in the past, most probably my potential clients, *i.e.*, those who have suffered personal injuries or who have wrongful death claims arising out of maritime incidents. To the extent that there is an attempt to reach these consumers, the proposed rules go so

Mr. Booth
February 4, 2008
Page 2

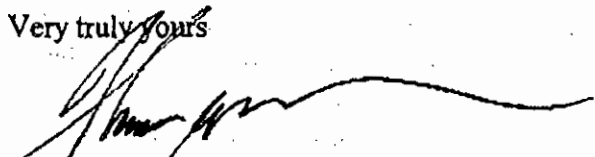
Re: Proposed Certification of Maritime Lawyers by the State Bar of California

far beyond the area where consumers might be able to use guidance, and become so complicated that they simply are not workable.

3. Unlike other areas of certified specialization in California, maritime law involves the application of federal law and/or the laws of various jurisdictions, both within and without the United States. Why would California want to create a certified specialty for a field which utilizes very little California law, whether substantive or procedural? Many maritime practitioners on the litigation side practice primarily in the federal courts because of the admiralty jurisdiction conferred upon the federal courts by the Constitution. When California courts address maritime and admiralty issues, they usually apply federal substantive law. It is only in a limited number of situations, such as personal injuries or property damage claims on offshore oil platforms or on land in our harbors that California substantive law would apply to determine the rights and remedies of the parties to a dispute.

I know that you and other from the Maritime Law Association and other bar associations have been active in opposing this certification program. If I can be of any assistance, whether my written opposition or by personally appearing at committee meetings, I would be happy to become involved. You have my permission to utilize this letter for whatever purposes you deem to be appropriate in your efforts to deal with issues raised by the proposed specialization program.

Very truly yours



Thomas G. Stolpman

TGS/clb

F:\DOCS\TGS\2008 Correspondence\ProposedCertification.wpd

cc: Lizabeth L. Burrell

Forrest Booth

From: Thomas G. Stolpman [stolpman@skes-law.com]
Sent: Monday, January 28, 2008 11:47 AM
To: Forrest Booth
Cc: 'Michael L. Swain'; Jennings, Janine; LBurrell@Curtis.com
Subject: California certification issue

I join Ms. Burrell in opposing the certification of Admiralty practice in California. I am almost certainly the only Past President of the California State Bar who has a maritime practice (primarily Plaintiffs' Personal Injury) and my review of the proposal results in my joining the thoughts reflected by Ms. Burrell.

In addition, the Maritime Law community in California is very small, so the certification program would be very cumbersome for the number of practitioners who might think about applying for certification.

If I can be of assistance in your work to shelve the proposal, please do not hesitate to call on me.

Tom

--

Thomas G. Stolpman
Trial Lawyer; Proctor in Admiralty
Stolpman Krissman Elber & Silver, LLP
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P.O. Box 22609
Long Beach, Ca 90801-5609
Tele: 562-435-8300
Fax: 562-435-8304
E-Mail: Stolpman@SKES-Law.com

17 a.

Forrest Booth

From: Piper, Glen [Glen.Piper@kyl.com]
Sent: Friday, January 25, 2008 5:23 PM
To: Forrest Booth

Dear Mr. Booth,

I am writing to express my opposition to the proposed State Bar certification of Admiralty Law as a specialty. My opposition is for all of the reasons set forth in President Burrell's letter as well as the letter I previously sent to the Board of Legal Specialization for the State Bar of California, which I have attached for your reference. I cannot express enough how I believe this specialization would turn away or inhibit other young attorneys from entering or being able to enter this interesting and diverse field of practice. If there is anything else you need from me in order to defeat this proposed specialization, please contact me. Thank you for your efforts.

Best Regards,
Glen Piper

Glen Piper
Keesal, Young & Logan
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glen.piper@kyl.com | www.kyl.com

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18.

DAVID E.R. WOOLLEY
ATTORNEY AT LAW

12400 WILSHIRE BOULEVARD, SUITE 1300
LOS ANGELES, CALIFORNIA 90025-1030
TELEPHONE (310) 207-5520
FACSIMILE (310) 207-5530
E-MAIL: dwoolley@verizonmail.com

January 25, 2007

VIA E-MAIL

Forrest Booth, Esq.
Severson & Werson
One Embarcadero Center, Floor 26
San Francisco, California 94111

Re: California Specialties

Dear Forrest:

I have Liz Burrell's letter.

As you may know, I have tried, lost and appealed so many cases that I have qualified as a California Certified Appellate Specialist for quite some time. I wouldn't mind having a double major - Certified Admiralty and Appellate Specialist - except I don't think the State Bar should certify maritime lawyers. But if it does, I will join the line!

There is only one reason why California should not create a maritime specialty - commonsense. Maritime law, in all its forms, is primarily federal, not State, in application. The State Bar would not dream of rating federal judges or U.S. attorneys - and neither should it seek to certify primarily federal practitioners.

But admiralty practice has distinctive elements; there is a nucleus of admiralty practitioners here; the California Maritime Bar is probably more active than anywhere else except perhaps Florida (which also has a specialist list), and there is no inherent reason except discretion that would prevent State certification. I don't think discretion will figure into the State Bar's analysis, since they see the income from the

Forrest Booth
January 25, 2008
Page 2

certification process as necessary to their financial survival. As I explain later, I can think of a reason how the State Bar might be encouraged to withdraw certification.

I cannot subscribe to the NIMBY arguments in Liz's letter. They should not be aired, because they are wrong and, like most weak and erroneous arguments, give support to the opposition. Here is how they are wrong:

1. State certification presents no threat to maritime uniformity as the MLA uses that phrase. It has always concerned itself with treaties, statutes and caselaw that threaten the coherent and uniform development of maritime law. Certification is not in the remit.

2. The public will not be misled by certification to think we are omniscient. The law is broad and in constant change. A specialist is more likely to know where to start with a novel problem than a nonspecialist – and specialist referrals are common (which is why the MLA Directory exists).

3. The MLA's Proctor designation is not, simply not, equivalent to a State certification. The MLA committee system is capable of good work; membership of the MLA indicates a maritime avocation – but the MLA is not a certifying body in any way.

4. Many clients already know how to pick their lawyers – but certification will help the lost client find a better lawyer.

The problem, as I see it, and the true focus for MLA opposition, is the lack of a professional examination. Focus on this, and admiralty specialization will die quietly.

When I qualified as a certified appellate specialist, I had to take a difficult professional exam. There were three overall requirements – quantity of appellate work (on a point system); quality of work (using professional recommendation); and knowledge (by exam).

The appellate committee is in the process of abolishing the exam element, so that the qualification will soon become only a beauty contest. I believe they have dumbed down the qualification, and for the worst of reasons: lack of money, lack of qualified candidates and invigilators, pressure from retiring appellate judges who want an easy specialty. But the greatest reason is financial. I think the State Bar now sees

Forrest Booth
January 25, 2008
Page 3

specialties as a low overhead, high return growth area – and they will elect not to certify a specialty rather than incur the high overhead of preparing, conducting and marking examinations.

Likewise I understand the maritime specialty will not have an exam, but will be self-qualifying – again for slipshod reasons. That deficiency is where the MLA should focus. On the level that the State Bar presently intends to operate, Liz is correct that membership in the MLA is just as good as self-certification by the State Bar. As presently concerned, neither is an objective indicator of quality. I believe that certification, appellate or maritime, should be objective as well as subjective, and that a hard, competitive, professional examination must be part of the process. Anyone can join a congenial association – but a **professional certification should be a warranty.**

So, to conclude:

- 1) There is nothing to prevent certification of maritime law by the State Bar except commonsense and discretion.
- 2) MLA membership serves the same function as self-certification.
- 3) A State Bar certification should indicate both experience and a high level of competence. Experience can be self-described, but a high level of competence can only be demonstrated by passing a difficult professional exam.

The MLA should concentrate on the exam qualification. The MLA should take the principled position that, since it already provides for a self-certifying membership, a State Bar assurance of ability that results from a certification must, and may only, issue upon completion of a difficult professional examination.

Best personal regards,



David E. R. Woolley

DERW:wy
DERW/Booth LI

Forrest Booth

From: Collier, William [William.Collier@kyl.com]
Sent: Friday, January 25, 2008 3:41 PM
To: Forrest Booth
Cc: KYL-Maritime
Subject: FW: Message from MLA President Burrell

Dear Forrest,

As we have previously discussed at some length, I remain very opposed to the proposed State Bar certification of Admiralty Law as a specialty for all of the reasons set forth in Liz's letter. If there is anything further that I can do to assist in having this proposal defeated, please don't hesitate to ask. Thanks for spearheading this for the MLA.

Kind regards,

Bill

From: MLAus [mailto:mlaus@callpcsolutions.com]
Sent: Thursday, January 24, 2008 5:40 PM
To: MLA CA Members
Cc: LBURRELL@CURTIS.COM
Subject: Message from MLA President Burrell

Good day Members,

I attach a message from President Burrell.

Have a nice day,

Robin Becker
Administrator

20 -

Forrest Booth

From: Bruce A. Lindsay [bal@cargolaw.com]
Sent: Friday, January 25, 2008 12:01 PM
To: Forrest Booth
Cc: lburrell@curtis.com
Subject: Cal State Bar effort re Admiralty Specialization

From: Bruce A. Lindsay
Sent: 25 January 2008
To: Forrest Booth
Subject: Specialization

Hello Mr. Booth:

I wanted to express my agreement with the views of the MLA which opposes legal specialization recognition for the practice of admiralty by the California State Bar.

I concur that the proctor program of the MLA is the recognized and only appropriate method for recognition in this area of practice. Please oppose this effort by the California State Bar. It is unnecessary and ill-considered.

Sincerely,

Bruce A. Lindsay

Law Offices of Countryman & McDaniel

Office Telephone: 310-342-6500
Office Fax: 310-342-6505
5933 West Century Boulevard, Suite 1111, Los Angeles, CA 90045 USA.

Visit www.cargolaw.com

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21.

Forrest Booth

From: James Tamulski [jtamulski@edptlaw.com]
Sent: Friday, January 25, 2008 10:54 AM
To: Forrest Booth
Subject: CA Certification

Dear Forrest,

Please include me among those who are strongly opposed to any effort to have the State Bar certify Admiralty & Maritime Law as a specialty.

That said....Hope and trust that everything is great with you and your dear family.

Best regards,

Jim

James J. Tamulski
Emard Danoff Port Tamulski & Paetzold LLP
49 Stevenson Street, Suite 400
San Francisco, CA 94105
Tel: (415) 227-9455
Fax: (415) 227-4255

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22.

Forrest Booth

From: William E. Dysart [wedysart@wllawsd.com]
Sent: Friday, January 25, 2008 10:39 AM
To: Forrest Booth
Subject: Admiralty Specialization

Mr. Booth:

I was contacted several months ago by a small group of lawyers here in California who were initiating the move for Admiralty specialization. I was asked if I would sign on the effort. For several reasons, I elected not to do so.

I have practiced admiralty law for nearly forty years and I have taught Admiralty Law at the University of San Diego and California Western University for nearly as long. Over those years of practicing and teaching I have become aware of several arguments that make the Admiralty and Maritime Law specialty impractical and misleading.

I fully support the arguments advanced by the MLA in President Burrell's January 24, 2008 letter.

Regards,
Bill Dysart

William E. Dysart, Esq.
Wright & L'Estrange
401 West A Street, Suite 2250
San Diego, California 92101 U.S.A.
Telephone: 619 231 4844
Facsimile: 619 231 6710

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23

413 434 1525 Page 1 of 2

Forrest Booth

From: mswain@swaindipolito.com
Sent: Friday, January 25, 2008 10:30 AM
To: Forrest Booth
Cc: janchez@gibsonrobb.com

Dear Forrest:

I write in response Ms. Burrell's suggestion with respect to the proposed admiralty/ maritime law "certification" for California bar members.

I oppose it for all of the reasons which she outlines in her letter. I have practiced maritime law for 23 years, and I cannot think of one good reason for the California Bar to open up this area of practice as a "speciality."

In my experience, people with maritime issues always seem to find the right lawyer. I cannot recall being involved in maritime litigation where my opposing counsel is not also knowledgeable in subject matter of the litigation.

Moreover, I am especially disturbed by the lack of a "grandfather" clause for Proctors in the MLA. For example, I have handled over 100 maritime cases in federal courts in California, representing both plaintiffs and defendants. I have had extensive formal training in maritime law as a Tulane Law graduate, a participant in the LLM in Admiralty program, and a former federal law clerk in a maritime jurisdiction (W.D. La.). I get absolutely no credit for my education and experience, based on the proposed qualifications I read. None.

Further, although filing a cruise passenger injury case gives you credit, filing an Answer or a Demurrer to one doesn't. In my view, the proposed qualifications are biased and skewed in favor inexperienced plaintiff's lawyers and against experienced maritime plaintiff and defense attorneys. They seek to qualify the unqualified, while surreptitiously excluding the qualified.

Third, the volume of admiralty and maritime cases (primarily Jones Act and cargo damage matters) has diminished considerably in the last few years due to consolidation and the dominance of foreign shipowners who utilize forum selection clauses. To met these new qualifications, experienced attorneys would be required to become more litigious and aggressive so as to rack up briefing or vessel arrest credits. That is not in the interest of the general public or the courts.

Finally, traditionally lawyers who practiced admiralty and maritime law (and patent and trademark law) were allowed to call themselves "specialists" under the rules of ethics. If you weren't qualified, you could be disciplined for misrepresentation. No state Bar designation was required then, and it shouldn't be required now.

If it ain't broke, don't fix it.

Very truly yours,

Michael L. Swain
SWAIN & DIPOLITO LLP

24.

1/25/2008

555 E. Ocean Blvd. Suite 400
Long Beach, California 90802
Ph (562) 983-7833
Fax (562) 983-7835
email: swajndipolito@lawyer.com

P.S. Frank Dipolito agrees with my observations.

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Forrest Booth

From: Arthur A. Severance [aas@sandslerner.com]
Sent: Friday, January 25, 2008 10:05 AM
To: Forrest Booth
Subject: Admiralty Specialty Certification in California

Dear Mr. Booth,

I am an MLA member practicing in California. I have an LL.M. in Admiralty from Tulane University and am in my first year of practice as a maritime associate. Our practice centers on insurance defense, with most of the cases involving recreational boating accidents. I reviewed the proposed certification requirements last August when the first comment period was open and was appalled. I could work as a maritime attorney for my entire career in this practice and never handle a cargo claim, thereby never qualifying for the certification. As the letter I recently received from President Burrell pointed out, every one of my clients comes to our firm through sophisticated insurers who are well aware of the qualifications of lawyers in our firm. Certification would serve no purpose in our practice.

Furthermore, most of the attorneys I encounter in my work are similarly specialized. Some handle only longshore workers' and Jones Act claims, for example. They would never have cause to file an action to rescind a policy of marine insurance or a limitation of liability action. If California adopts certification, I suspect very few attorneys will ever qualify other than through a grandfathering process. The net effect of a certification would be to mislead the public into thinking that far fewer attorneys are capable of handling maritime cases than there actually are.

Thank you for your efforts in opposing the certification process.

Very truly yours,

Art Severance

Arthur A. Severance
Sands Lerner
12400 Wilshire Boulevard, Suite 1300
Los Angeles, California 90025
Tel.: (310) 979-9144
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=====

1/25/2008

25

Forrest Booth

From: William D. Hughes [whughes@HughesNunn.com]
Sent: Friday, January 25, 2008 9:14 AM
To: Forrest Booth
Cc: lburrell@lpklaw.com; Donald J. Querio
Subject: Endorsement of MLA's opposition to certification of Admiralty as a legal specialty

Forrest:

Please note my agreement with the MLA's opposition to certification of Admiralty as a legal specialty for the reasons stated in the attached letter from Liz Burrell.

Please call if you have any questions, and by all means say hello to Don Querio, with whom I worked at Treasure Island when we were in Navy JAG in the mid-70s.

Kind regards,

Bill

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Hughes & Nunn LLP
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San Diego, CA 92101
(619) 231-1661 office
(619) 578-0668 direct dial
(619) 236-9271 fax
(619) 862-4777 cell

26.

Forrest Booth

From: David Weil [dweil@weilmaritime.com]
Sent: Thursday, January 24, 2008 7:06 PM
To: Forrest Booth
Subject: California Admiralty Certification

Hello Forrest,

I write to follow up on Liz Burrell's suggestion that we share our thoughts on California's proposal to certify Admiralty practitioners. I agree with the position taken by the MLA.

My practice is focused almost entirely on recreational boating, commercial fishing, and workboats. I do very little insurance defense work and, as such, my client base is comprised mostly of boat owners, yacht brokers, and work boat operators. In short, these are the members of the public who do not have a rolodex of Admiralty lawyers at their fingertips and as such are most likely to actually care whether a lawyer has a California Bar Certification.

I probably do more small vessel purchase and sale work than any other attorney in the State. I also do lien enforcement and defense, I work with a lot of small passenger vessel owners and licensed mariners, and I handle a lot of errors and omissions defense for yacht brokers and marine surveyors. Unfortunately, I am pretty rusty on COGSA, DOHSA, General Average, and port security. All of this simply emphasizes the point raised by Liz in her letter. We practice in a wide ranging field that is strung together by salt water and a certain camaraderie. Will I be forced to become expert in maritime death actions so that I can arrest a yacht that has defaulted on a mortgage? The answer is yes, if California moves forward with the certification project, since my client base lacks the industry sophistication to understand the breadth of the field.

Ironically, I understand that this whole project has been spearheaded by my former business partner Marva Wyatt. With all due respect to her, I simply do not support the establishment of a California Bar Certification for Admiralty Law.

Thank you.

David Weil

David Weil, Esq.
Law Offices of Weil & Associates
249 East Ocean Blvd., Suite 801
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w: www.weilmaritime.com

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27.

Forrest Booth

From: Downs, Andrew [andy.downs@bullivant.com]
Sent: Thursday, January 24, 2008 5:54 PM
To: Forrest Booth
Subject: FW: Message from MLA President Burrell

Forrest -

YOU may convey that I oppose any State Bar certification of admiralty as a specialty.

Andy Downs
Admitted in California and Nevada
Bullivant|Houser|Bailey PC
601 California St., Ste. 1800
San Francisco, CA 94108-2823
<mailto:andy.downs@bullivant.com>
direct dial: 415.352.2716 - fax: 415.352.2701
<http://www.bullivant.com>
Seattle . Vancouver . Portland . Sacramento . San Francisco . Las Vegas

From: MLAus [mailto:mlaus@callpcsolutions.com]
Sent: Thursday, January 24, 2008 5:48 PM
To: MLA CA Members
Subject: Message from MLA President Burrell

Good day Members,

I attach a message from President Burrell.

Have a nice day,

Robin Becker
Administrator

mail.bullivant.com made the following annotations

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Forrest Booth

From: Dennis Seider [Seider@pmmlaw.com]
Sent: Friday, January 25, 2008 10:02 AM
To: Forrest Booth
Subject: RE: Message from MLA President Burrell

I think the population of concerned parties is small but first timers (not the usual experienced clients) might benefit; we have had our share inexperienced opponents; please keep me posted.
Thanks,
Dennis

From: Forrest Booth [mailto:fb@severson.com]
Sent: Friday, January 25, 2008 9:17 AM
To: Dennis Seider
Subject: RE: Message from MLA President Burrell

Hi Dennis:

I definitely agree with the MLA's position. I do feel that Admiralty is "different", but I think it is much too broad a field to certify someone as a specialist in it, implying that you are expert in all aspects. I also think that there is no need for certification.

Regards,

Forrest.

-----Original Message-----

From: Dennis Seider [mailto:Seider@pmmlaw.com]
Sent: Friday, January 25, 2008 8:54 AM
To: Forrest Booth
Subject: FW: Message from MLA President Burrell

Forrest:

What is your position on this?

Dennis

Dennis J. Seider
Of Counsel
seider@pmmlaw.com

PARKER MILLS LLP
The Lawyers' Lawyers

865 S. Figueroa St., Suite 3200
Los Angeles, CA 90017-5431

+

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Facsimile: (415) 956-0439

July 7, 2008

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

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

Re: Opposition to Proposed Specialty Certification of Admiralty and Maritime Law

Dear Members of the Board of Legal Specialization:

This is my further public comment opposing the proposed certification of a specialty in admiralty and maritime law in California; a protest against the unauthorized use of my name in support of the proposed certification; and a notification to the Board that there is far less support for the proposed certification than has been suggested.

1. I Have Never Supported The Proposal.

I was shocked to learn that, in a letter dated December 8, 2005 to J. Scott Bovitz, Vice-Chair of the California State Bar, attorney Marva Jo Wyatt listed my name as someone who had given her authorization to include my name and my Bar admission number as a supporter of her proposal to certify admiralty and maritime law as a specialty. I never gave Ms. Wyatt authority to use my name; I never allow my name to be used publicly, in support of such proposals, ballot propositions, pending legislation or the like. I do not recall ever discussing the matter with Ms. Wyatt. What I do recall is a brief discussion with her co-supporter, B. Otis Felder, during a committee meeting we both attended some years ago. I recall telling Mr. Felder that I found the idea "interesting", but again, did not say I would support it or give him authorization to use my name in any capacity.

2. The Proposal Lacks Widespread Support.

I have reviewed the list of names attached to Ms. Wyatt's letter of December 8th. I know, from personal discussions with almost half of those individuals, that they either no longer practice admiralty law or they do not support the Proposal currently before the Board. Many of

Board of Legal Specialization
July 7, 2008
Page 2

them have written separately to the Board to state their opposition to the Proposal. Those letters and emails are in your file. Those who actively oppose (who are on the list) include Messrs. Danoff, Robb, Nowell, Underhill, Gibson and Ms. Sanchez, among others.

3. The Current Certification Requirements are Poorly Drafted.

I believe that, overall, maritime law is too broad to be called one specialty. However, I also specifically object to the current proposal for several reasons. The proposed certification requirements are inequitable in that they are blatantly weighted to give maximum credit to maritime personal injury lawyers, and fail to address at all many other areas of maritime law. By being specifically weighted to favor a particular group of maritime lawyers and ignoring both the practices of others and the great diversity within maritime law, the proposed certification requirements are not drafted to and cannot assist the public to identify attorneys proficient in admiralty and maritime law.

- Task 2.2.5 gives 30 points for preparing and filing a maritime personal injury complaint, but there is no provision giving credit for answering or responding to a personal injury complaint, or preparing and filing 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 simply files a personal injury complaint, which can be done using a form.
- Task 2.1.7 addresses credit for tort actions. There is no corollary provision for contract actions. More maritime lawsuits involve contract disputes than torts.
- 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
- Vessel subsidies
- Yacht licensing, mooring, repairs, collisions
- Criminal matters
- Shipowner conferences (associations of shipowners)
- Marina liability
- Marine construction

Marine equipment taxation
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. 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.” 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 obtains jurisdiction over a defendant vessel and provides security for the lien holder. The arrest in and of itself is not an “action” which is ever 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 to be the “conclusion”, although the vessel is released and the arrest is thereby 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, preparing counter-actions for wrongful arrest, and motions to reduce 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 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, which is a large portion of the maritime practice.
- 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; they litigate claims to wrecks, their cargoes and their insurance proceeds. The sums involved, and possible environmental damage, are often enormous.
- 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 San Francisco in November 2007, which are not addressed by the proposed requirements. Maritime environmental law and natural resource damage assessments are significant practice areas

Given that the requirements are so poorly drafted and so many practice areas are ignored or not adequately addressed, I am concerned about what might be included on any 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 only to maritime personal injury lawyers as is the current Proposal.

4. Certification Will Be Impossible Because Of The CLE Requirements.

It is not possible to satisfy in California the proposed requirement of 45 credits in admiralty CLE obtained in the 3 years before application for certification. The Pacific Admiralty Seminar is the primary provider of admiralty CLE in California. The PAS conducts a two-day seminar every second year that generally provides 15 CLE units. (In 2006, the seminar was held on a single day providing only 6 units.) The maximum number of admiralty CLE credits that can be obtained in 3 years therefore 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 additional programs needed to satisfy the proposed certification requirements.

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

The only other alternative to satisfy the CLE requirement is to be a recent graduate of an accredited LLM program in admiralty. The only ABA-accredited LLM in admiralty is awarded by 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.

5. California's Revisions To The Rules Of Professional Responsibility Already Adequately 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 to 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, thereby providing the public with the same information and comfort as the proposed (albeit biased) certification.

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

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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 already enjoy a distinction shared only with patent lawyers.

For the reasons set forth above, I request that the Board:

- (1) Delete my name from the list of those supposedly supporting certification of admiralty and maritime law; and
- (2) Reject the proposal to certify admiralty and maritime law in California.

Thank you for your consideration.

Very truly yours,



Forrest Booth
California Bar No. 076144

FB:dhd

cc: Wes Avery, Esq.