

AGENDA ITEM

NOVEMBER 134
Proposed Standards for
Certification and Recertification
in Admiralty and Maritime Law –
Return from Public Comment

DATE: October 29, 2008

TO: Members of the Board of Governors
Board Committee on Member Oversight

FROM: Lester J. Friedman, Chair, Board of Legal Specialization
Phyllis J. Culp, Director, Office of Special Admissions and Specialization

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

ATTACHMENTS: 1. Standards for a New Specialty in Certification and Recertification in Admiralty and Maritime Law – Proposed Approval Following Public Comment
2-6. Public Comments Received

EXECUTIVE SUMMARY

The Board of Legal Specialization (BLS) requests that the Board Committee on Member Oversight recommend that the Board of Governors approve the Standards for Certification and Recertification in Admiralty and Maritime Law (Standards) as set forth in the attachment to this memorandum.

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

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

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

The proposed Standards were circulated for public comment in May 2007. After reviewing the comment, the Admiralty and Maritime Law Consulting Group recommended a number of material changes to the Standards, which were then published for an additional public comment period that ended July 11, 2008. Seventy-eight comments were received; 48 opposed and 30 in favor. After reviewing the comments, the Admiralty and Maritime Law Consulting Group determined that opposition was based on misperception of the certification program, the same issue that arose in Florida prior to its establishment of its certification program in Admiralty and Maritime law. A full discussion of the comment received appears below.

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

BACKGROUND:

In 1970, based on a proposal by the Committee on Legal Specialization, the Board of Governors adopted a pilot program to develop an attorney certification program to identify for the public attorneys who have demonstrated their experience and proficiency in specific areas of law. The pilot program, which certified specialists in criminal law, taxation law, and workers' compensation law, was approved by the Supreme Court of California in 1972.

In 1985, the Supreme Court of California approved a permanent legal specialization program. Currently, there are nine specialty areas: Appellate Law; Bankruptcy Law; Criminal Law; Estate Planning, Trust and Probate Law; Family Law; Franchise and Distribution Law; Immigration and Nationality Law; Taxation Law; and Workers' Compensation Law.

The program is staffed by the Office of Special Admissions and Specialization and administered by the BLS with the assistance of nine Advisory Commissions corresponding to the nine specialty areas. At present there are approximately 4,200 certified specialists, including approximately 150 on judicial service. To be certified as a specialist, an attorney must pass a written examination, demonstrate experience based on performance of a variety of activities related to the specialty area, complete continuing education in the specialty area, and be favorably evaluated by other attorneys and judges familiar with the attorney's work. The program is completely self-funded by fees collected from applicants, certified specialists, education providers, and accredited private certifiers.

The program rules are reviewed on an ongoing basis for the purpose of incorporating administrative practices that have evolved over time, streamlining the certification process to make the program as efficient and cost-effective as possible, and making other necessary changes based on the experience of the BLS in administering the program. The standards for certification and recertification are also reviewed to ensure that the requirements reflect current practice and terminology in each specialty area.

CONSULTING GROUP

At the request of the BLS, the Board of Governors created a consulting group in 2007 to examine the feasibility of, and develop standards for, certifying legal specialists in the area of Admiralty and Maritime law. The Consulting Group is comprised of 8 top practitioners in the State in the field of admiralty and maritime law. They include the former chair of the Admiralty Committee of the Long Beach Bar Association, professors of admiralty law, and practitioners who represent marinas and boatyards, maritime plaintiff's personal injury attorneys, and a Proctor member of the Maritime Law

Association. The Consulting Group recommended that the BLS go forward with the proposed specialty and developed the attached Standards for which we are now seeking approval.

PUBLIC COMMENT

At its May 2007 meeting, the Board Committee on Member Oversight authorized the publication of the proposed amendments for a 90-day public comment period, which ended on August 9, 2007. The proposed amendments were published in the *California Bar Journal* and on the State Bar website. In addition, notice of the public comment opportunity was mailed to all certified specialists.

Seventy-eight comments were received; 48 opposed and 30 in favor. The consulting group thoroughly reviewed the comments and noted a similarity to the experience in Florida when Florida first proposed admiralty and maritime law as a specialty there. As was the case in Florida, here in California there appears to be a misperception of the specialty certification program. Specialty certification recognizes competency. Certification is a statement to the public about the attorney who has demonstrated that he or she has met predetermined and standardized criteria for required knowledge, skill, or competencies, to retain the credential, the attorney must meet objective assessments. The certification is for 5 years, and in order to renew, the specialist must again satisfy objective assessments.

In speaking with the persons who established Florida's specialty, they reported similar opposition by those established practitioners who made the same comments that we have received and listed below. However, since its establishment in 1995 many of those who have opposed the specialty have become certified. The current chair of, Florida's Admiralty and Maritime Law Certification Commission states in his comment, "My certification field has enjoyed success because the lawyers in Florida that practice this specialty wanted to be able to demonstrate to the public and other practitioners that competence comes from experience and integrity...The Florida Bar has embraced board certification because it helps to insure competence and improves the image of lawyers in general..."

Opposition to the creation of the new specialty can be divided into the following categories:

- The area of law is too broad
- The area of law has too many subspecialties
- My specific practice area will not qualify / unfairly weighted
- Required Education is not currently available
- Personal Injury is a major component of the proposed standards
- A credentialing entity already exists for admiralty attorneys
- Clients are already aware of how to locate an attorney in the field of law

Comment	Response
Area too broad	<p>A search of the Internet or the telephone book's yellow page uses the term "admiralty and maritime law" to identify the practice area that has traditionally identified legal practices with such things as the shipping industry, regulation of the maritime industry, marine insurance, wrongful death of seamen, passengers, etc. The Florida Bar's legal specialization program, the only one in that currently certifies Admiralty and Maritime lawyers identifies its specialty under a broad definition that has been traditionally grouped area of practice in "admiralty and maritime law."</p> <p>Certification is a way to identify to the public attorneys who have demonstrated proficiency in a specialty area; certification does not alter the</p>

	requirement that an attorney must be competent in an area of law. Certified specialists are not experts in all areas of law but recognize the issues so that they may refer such issues to another attorney who is proficient in that particular area of law.
Required education not available	The proposed standards require legal education that is currently not available. Each new specialty has raised this issue. However, the experience of BLS has been that new providers step into this void and provide education, and indeed, more education results in the creation of a new specialty.
Too many sub specialties	Each area of law to those who practice in the field, has identifiable subspecialties, however, those seeking legal advice may only recognize that they have a legal issue in a particular area of the law. Therefore, it is helpful to the public that the specialty be broadly identified. The Consulting Group consciously determined to make it broad.
My specific practice area will not qualify / unfairly weighted	Based upon the public comment received in May 2007, the Consulting Group made substantive changes adding new sections and experience requirements to the proposed standards. After review of the comment received in August, no changes were made to the standards as published. The Consulting Group determined not to add further subspecialties, as the program rules provide for additional tasks to be accepted in "substantial" compliance with the enumerated tasks and to make the practice area as broad as possible.
A credentialing entity already exists for admiralty attorneys	The Maritime Law Association of the United States is a member organization that grants its members a title of "Proctor." It is not a credential and Proctor in admiralty is more of an honorific title; it does not have the rigorous objective assessment that a certification program requires, such as testing, both initial and on-going education, peer review and demonstration of satisfaction of enumerated tasks.
Clients are already aware of how to locate an attorney in the field of law	While there may be large institutional clients who know how to locate a competent attorney, certification is another method by which a consumer may determine how to hire an attorney. Based upon public comment, small businesses, consumers, seafarers and others do need to know how to locate needed legal services.

(The full texts of the written comments are attached.)

FISCAL AND PERSONNEL IMPACT:

The Board of Legal Specialization is a self-funded program. Its budget includes funds for the development of new specialties. There are adequate funds in the budget to cover the costs of the program.

BOARD BOOK IMPACT:

None.

RULE AMENDMENT IMPACT:

Addition to the Legal Specialization Program with the adoption of Standards for Certification and Recertification in Admiralty and Maritime Law.

PROPOSED BOARD COMMITTEE RECOMMENDATION:

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

RESOLVED, that the Board Committee on Member Oversight recommends that the Board of Governors establish a new specialty in Admiralty and Maritime Law and recommends adoption of the Standards for Certification and Recertification in Admiralty and Maritime Law as attached.

PROPOSED BOARD RECOMMENDATION:

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

RESOLVED, following public comment period and consideration of comments received, and upon recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby approves the establishment of Admiralty and Maritime Law as a new certified legal specialty and adopts the Standards for Certification and Recertification in Admiralty and Maritime Law as attached.