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July 10, 2008

VIA EMAIL & FACSIMILE  
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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:

This is a public comment against the proposed specialty certification for admiralty and maritime law in California. I strongly believe that the certification is unnecessary; furthermore, the proposed draft is at once out of touch with the reality of admiralty practice and nearly insurmountable for practitioners seeking the specialty designation.

I have had an opportunity to review the negative commentary previously offered on behalf of the Maritime Law Association and the Pacific Admiralty Seminar Committee of the Bar Association of San Francisco. I fully agree with the criticisms stated therein, particularly with regard to how poorly the proposed qualifications correlate with the actual practice of maritime law. The proposal seems to be based on an arbitrary selection of topics and activities encountered by maritime lawyers, one that is neither comprehensive nor representative of the day-to-day practice.

What's more, there is simply no need for the State Bar to designate admiralty "specialists." Attorneys are already barred by ethical canons from holding themselves out as practitioners in a certain field unless they are actually qualified to do so. The maritime bar is quite small, particularly when compared with other areas of law. The same may be said about the pool of potential clients—by definition, their legal needs will arise from some maritime activity in their lives; thus, this is a limited class of "consumers" in need of the protection afforded to the public through the specialty certification program. Put another way, while it makes a great deal of sense to distinguish certain expert attorneys practicing, say, family law, that is not the case in admiralty.

Finally, the proposed qualifications for obtaining the certification are onerous to an unrealistic degree. Given the small size of the maritime bar, there is a dearth of CLE offerings, when compared with what is available in other areas. Hands-on experience and in-house tutelage account for the majority of substantive training. Unfortunately, for obvious reasons, such activities are difficult to quantify. This is no reason to impose a requirement that is essentially unattainable, at least to an attorney with a busy practice. Few of us have the means or the time, for example, to travel to Tulane University for its symposia on maritime law; regrettably, almost no such seminars are typically offered in California and even when they are, there are not enough CLE units available every three years to meet the proposed threshold of 45. Likewise, the required amount of litigation experience seems out of step with how few cases actually proceed to trial. A young associate starting in the maritime field has a very slim chance of ever being the principal attorney in an admiralty trial.

For the reasons set forth above, I wholeheartedly join in the comments submitted by my fellow practitioners, including those on behalf of the MLA and the PAS, against the implementation of the proposed specialty certification.

I appreciate the opportunity to submit my commentary.

Very truly yours,



Eugene Gogerman  
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GG:jr

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July 10, 2008

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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:

This letter is a response to the proposed specialty certification for admiralty and maritime law in California. I believe that the proposed draft of the certification is unfairly weighted in favor of maritime personal injury lawyers and it is extremely difficult for practitioners to complete the requirements of the specialty designation.

The proposed certification requirements do not correlate with the actual practice of maritime law and are specifically weighted to give maximum credit to maritime personal injury lawyers. They award a large number of points for preparing and filing a maritime personal injury complaint. As a young maritime defense attorney, these proposed requirements 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. These requirements are poorly drafted and make it extremely difficult for maritime defense lawyers to tally a large number of points.

Furthermore, the proposed qualifications for obtaining the certification are extremely unrealistic. It is not possible to satisfy the proposed requirement of 45 credits in admiralty CLE obtained in the 3 years before the application for certification. Even if the Pacific Admiralty Seminar was attended twice in three years, as it is only offered every two years, an attorney could only earn 30 CLE credits. That would make attending the maritime law symposium in Tulane a virtual requirement in order to obtain the required 45 hours of CLE credit. Few of us have the means or the time to travel to Tulane University for its symposia on maritime law and it is unreasonable to make that trip a requirement.

Board of Legal Specialization  
State Bar of California  
July 10, 2008  
Page 2

For the reasons set forth above, I wholeheartedly join in the comments submitted by my fellow practitioners, including those on behalf of the MLA and the PAS, against the implementation of the proposed specialty certification.

I appreciate the opportunity to submit my commentary.

Very truly yours,



Jeff Graham  
STERLING & CLACK

JG:jr

**Maynard, Lorna**

---

**From:** John A. Edginton [jedginton@edg-law.com]  
**Sent:** Friday, July 11, 2008 2:30 PM  
**To:** Legal Specialists  
**Subject:** Admiralty specialization proposal as revised

Ladies and Gentlemen: I refer to my earlier correspondence opposing this proposal; the revisions do nothing to address my concerns and I hereby oppose proceeding with this specialization project.

In a nutshell, I think a California status is unnecessary because the Maritime Law Association, an affiliate of the American Bar Association, already has "Proctor in Admiralty" status available on a nationwide basis which is sufficient to support anyone wishing to call themselves a maritime lawyer in promotional material.

Second, the CLE requirements of the proposal totally are unrealistic based on what is available in California.

Finally, the proposal really only addresses claims oriented practitioners, totally ignoring the transactional and financing part of the practice. The proposal is unreasonably skewed towards the personal injury and cargo claims practitioners.

I adopt and support the objections filed by the Maritime Law Association and the Pacific Admiralty Seminar group.

Respectfully,

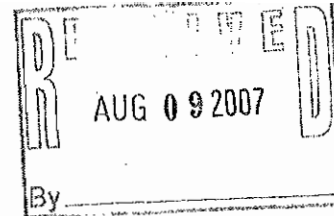
John Edginton (a maritime law teacher, author and practitioner for over 40 years)

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August 8, 2007

BY Email and Post

Board of Legal Specialization  
State Bar of California  
180 Howard St.  
San Francisco, CA 94105-1639

**Re: Admiralty – Proposed Specialty Certification**

Ladies and Gentlemen:

I have practiced admiralty and maritime law for 40+ years, have taught the subject at two of our local universities, have a national and international maritime law reputation, am a proctor member of the Maritime Law Association of the United States and am the Editor in Chief of *Benedict's Maritime Law Bulletin*. I oppose the proposed specialization proposal for all the reasons cited in the Pacific Admiralty Seminar Steering Committee letter and the following additional reasons.

While there might be some certification proposal that I could support, the 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. Please do not adopt this proposal.

Very truly yours,

A handwritten signature in black ink that reads "John A. Edginton". The signature is fluid and cursive, with a large loop at the beginning of the first name.

John A. Edginton

35389

none. That is the opposite of what State Bar Certification is supposed to do.

The proposed standards and the application of "points" to determine experience levels is skewed heavily towards the personal injury and death practices as well as the routine maritime lien practices. It undervalues marine insurance expertise and undervalues the attorney who succeeds in keeping his or her clients out of court. A lawyer with the requisite maritime experience in tort and lien cases to be certified may not possess the minimum qualifications needed to advise or litigate regarding marine insurance matters. Conversely, a lawyer with a nationally recognized expertise in marine insurance matters may not be appropriately qualified to handle a maritime personal injury case. Both are specialists, but neither should be tarred with the brush of not being a "certified" specialist (or being precluded from marketing their expertise) simply because their expertise is in a subset of the broad field of maritime law. At the same time, do you want to certify specialists who are specialists in only one facet of maritime law, be it personal injury or marine insurance, if they do not have sufficient skill to handle both areas?

The proposed Certification/Specialization for Maritime Law is a solution in search of a problem. It is unnecessary and should not be adopted. If it 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 with demonstrated skill in any other discipline so that those with that demonstrated skill in one recognized discipline of maritime law may be certified. If so, 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."

Stop. This is unnecessary and misguided.

Thank you for your consideration of these comments.

**Andrew B. Downs**  
Admitted in California and Nevada  
**Bullivant|Houser|Bailey PC**  
**Merged with Jacobs & Ferraro, LLP, April 2008**  
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Seattle . Vancouver . Portland . Sacramento . San Francisco . Las Vegas

mail.bullivant.com made the following annotations

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8/6/2008

**Maynard, Lorna**

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**From:** Downs, Andrew [andy.downs@bullivant.com]  
**Sent:** Thursday, July 10, 2008 1:02 PM  
**To:** Maynard, Lorna  
**Subject:** Maritime Law Certification Program

Ms. Maynard –

Please consider this e-mail as my written comments regarding this proposal.

I strongly believe that having a certified specialty in maritime law is a mistake, and as presently framed, even with the revisions, the proposal is fatally flawed. It is a solution in search of a problem.

By way of personal background, I was first admitted in 1983 and for the first 10 years of my career primarily practiced in the maritime area (at the time I was an associate and later a partner in the former firm of Derby, Cook, Quinby & Tweedt, which specialized in that area). For the past ten years or so, the overwhelming majority of my practice has involved insurance coverage matters, many of them arising out of policies of marine insurance. In many instances, my duty of client confidentiality would preclude me from telling the certification board about that representation (a very small percentage of those matters are litigated because my clients do not want to litigate them; of those litigated, few result in dispositive hearings, trials, etc.). Although I have handled those matters in the past, I do not handle maritime personal injury and death litigation today, nor do I handle cargo damage actions, although I tried several such cases as recently as ten years ago. I have handled limitation of liability and maritime lien actions more recently. Reading the point scale liberally, I cannot possibly qualify for certification because the point scale is too heavily skewed towards tort litigation and lawyers who are maritime generalists, not lawyers who specialize in subsets of maritime law. I must add, however, that my personal qualification or lack thereof is not that material to my opposition. Even if the standards were changed, I doubt I would seek Certification (for example, I've been a member of the Maritime Law Association for about 20 years or so, but I've never bothered to seek "Proctor" status with the MLA – it simply isn't of any value). Given the national nature of my current practice, few, if any, of my clients or prospective clients would care whether or not I was Certified in California.

My substantive opposition is based on the fact that Maritime law is both a broad and a narrow field. It is narrow relative to the practice of law in general, but it is broad in that it encompasses a broad range of issues and situations many of which have on-shore parallels in the common and statutory law. It is not like Tax law or Worker's Compensation law where there is a very narrow well-defined area of practice. The breadth of Maritime Law is what makes this proposal misguided. Within the "specialty" of maritime law, there are many subspecialties. There are lawyers who do nothing but cargo damage cases. There are lawyers who handle only death and injury claims. There are lawyers who focus on charter parties. There are lawyers who focus on maritime lien claims. There are lawyers who do transactional work. And, there are lawyers like me, who advise regarding coverage under marine insurance policies. Each of those subspecialties is different. While many require a some minimal level of knowledge regarding the other areas, that does not mean that the specialist lawyer actually handles matters in those other specialty areas. The present proposal would result in the certification of maritime law generalists who, while lacking specialist skills, can handle routine maritime matters in a wide variety of specialty areas, but who lack the specialist skill needed to handle the most complex matters in any of those areas. In short, the proposal certifies the jack of all trades who is the master of

8/6/2008

SHEPPARD 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



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July 25, 2007

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Our File Number: 0004-090009

Via Email and Facsimile  
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(415) 538-2180

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

**Re: Proposed Specialty Certification in Admiralty and Maritime Law**

Dear Board Members:

I 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



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Our File Number: 0004-090009

June 24, 2008

**Via Email and Facsimile (3 pages)**  
**[legalspec@calbar.ca.gov](mailto: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 again in opposition to this proposed specialty certification. I have previously expressed my opposition in a letter dated July 25, 2007, a copy of which I attach.

I have seen Jennifer Tomlin Sanchez's letter, sent on behalf of the Bar Association of San Francisco, and agree entirely with its views. I add only that the Board should not, in light of the BASF's criticism, attempt to re-jigger hours and credits. That won't improve what started out as a bad idea.

Again, 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, where I am a member of the adjunct faculty and teach admiralty.

Thank you.

Very truly yours,

Charles S. Donovan

Board of Legal Specialization  
July 25, 2007  
Page 2

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(Signed)

Charles S. Donovan



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July 25, 2007

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Our File Number: 0004-090009

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

**Re: Proposed Specialty Certification in Admiralty and Maritime Law**

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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

Board of Legal Specialization  
January 31, 2008  
Page 2

Again, thank you for your time and attention. Should you have any questions for me in this regard, please do not hesitate to contact me at your convenience.

Very truly yours,

Ryan C. Donlon

# Severson & Werson

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January 31, 2008

VIA ELECTRONIC MAIL & FACSIMILE

Board of Legal Specialization  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
legalspec@calbar.ca.gov  
415-538-2180 (fax)

**Re: Proposed Specialty Certification of Admiralty and Maritime Law**

Dear Members of the Board of Legal Specialization:

Thank you for your attention to this letter, and for your service to the State Bar of California. I write to express my strong opposition to the Board's proposal to certify admiralty and maritime law as a legal specialty within the California State Bar. Please note that the opinions stated in this letter are my own. I make no representation on behalf of my law firm.

About a third of my practice is in admiralty and maritime law. I am an associate member of the Maritime Law Association of the United States, and on its behalf have authored an *amicus curiae* brief to the United States Supreme Court. I am a member of the Pacific Admiralty Section of the Bar Association of San Francisco, and am on its Steering Committee. I am also a member of the Association of Marine Underwriters of San Francisco and the San Francisco Marine Claims Association. I also have a Postgraduate Certificate in Maritime Law from the University of London.

Certifying admiralty and maritime law as a specialization on the state level is to misunderstand the subject, which is uniquely federal (United States Constitution, Art. III, § 2) and (inter)national. Creating standards on a state-by-state level is an unwelcome, and perhaps unconstitutional, interference with the uniformity of its substantive law and practice. The admiralty bar stretches from coast to coast and beyond. Creating different standards for practitioners in different states simply does not make sense, particularly when admiralty and maritime law have so many sub-specialties. This appears to be nothing more than a solution in search of a problem. Therefore, please resist the temptation to stretch the tentacles of bureaucratic overregulation into waters where they do not belong.

Admiralty and Maritime Law – Proposed Specialty Certification

June 17, 2008

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(*The LOTTAWANNA* (1874) 88 U.S. (21 Wall.) 558, 575 (italics added); see also *Fitzgerald v. United States Lines Co.* (1963) 374 U.S. 16, 20-21 [it has long been the prerogative of federal government to “fashion[] the controlling rules of admiralty law”].) Consequently, the admiralty bar has already formed a nationwide association, the Maritime Law Association ([www.mlaus.org](http://www.mlaus.org)), which distinguishes those who have some maritime experience as “associates” and those with expertise as “proctors.”

The analogy to patent law, which along with admiralty is enumerated in the U.S. Constitution, is a natural one. The federal government, through the United States Patent & Trademark Office, regulates the practice of patent law through a patent bar examination. (See <http://www.uspto.gov/web/offices/dcom/gcounsel/oed.htm>.) It is perfectly capable of doing the same for admiralty, which as your April 15 memorandum correctly notes, is federal law.

The second reason that proponents cite as a reason for certification is a cruise line operator’s choice of “Los Angeles” as a preferred venue for litigation. Rather flimsy, isn’t it? Many of these same claims could have been brought in California, anyway. And this explanation still fails to account for why the state is the proper regulatory authority, when federal law still applies. Besides, there are other, better ways for litigants to identify “competent counsel” without onerous governmental regulation.

Should the Board proceed with the certification process, which I respectfully submit that it should not, it should have serious concerns about the proposed standards. I would be most curious to hear how the advocates of certification came up with the convoluted points system, in which some practice areas are weighed more favorably than others; where filing a complaint is worth almost as much as trying a case (!); and how anybody could achieve 45 hours of CLE credit in maritime matters within three years (especially without leaving the state of California).

In fact, these flaws are further indicia of why regulation of admiralty and maritime law is such a fundamentally bad idea. Admiralty and maritime law are not discrete legal subjects in the same way as patent law or family law. Rather, admiralty and maritime law is diffuse, ranging from personal injury to ship financing, from charterparty contracts to pollution; from marine insurance to fishing disputes; from salvage to criminal law and beyond. It should not be specially regulated, especially by the absurd standards that the committee has proposed.

Again, thank you for your attention to this letter. I urge a “no” vote to this proposal, which really is a bad idea.

Very truly yours,



Ryan C. Donlon

# Severson & Werson

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June 17, 2008

VIA U.S. POSTAL MAIL & FACSIMILE

Board of Legal Specialization  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
Fax: 415-538-2180

Re: Admiralty and Maritime Law  
Proposed Specialty Certification and Flaws Pertaining Thereto

Honorable Members of the Board of Legal Specialization:

Thank you for your service to the State Bar of California, and for your attention to this letter. I write again<sup>1</sup> to oppose state certification of admiralty and maritime law, especially the (amended) standards that the committee has proposed. Certification makes little sense. The proposed standards make even less.

There is no reason for the State Bar of California to regulate admiralty and maritime law, and compelling reasons not to do so. As the force behind increased regulation of the industry, the committee should have the burden of showing a substantial need for it. But the grounds that the committee cites for increased regulation are far from convincing.<sup>2</sup> As the best examples the committee could come up with for certification, the Board would be right to have grave reservations. This truly is a "solution" in search of a problem.

First, 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. There is some irony in the citation of the *federal* rules as a reason for *state* regulation. Indeed, admiralty and maritime law are of a national character, thus explaining their inclusion within Article III, section 2 of the U.S. Constitution – a fact that led the U.S. Supreme Court to the "unquestionable" conclusion that "the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. *It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects...*"

<sup>1</sup> I wrote before on January 31, 2008, and attach a copy of that letter for your convenient reference.

<sup>2</sup> [http://www.calbar.ca.gov/state/calbar/calbar\\_generic.jsp?cid=10145&n=92145](http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10145&n=92145)

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## CERTIFICATION FOR ADMIRALTY & MARITIME LAW SPECIALTY APPROVALS

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December 8, 2005

J. Scott Bovitz  
Vice-Chair California State Bar  
880 W. 1<sup>st</sup> Street  
Los Angeles, CA 90012

*Via U.S. Mail*

Re: California State Bar Board of Legal Specialization

Dear Vice-Chair Bovitz:

It has been some time since my last correspondence with you regarding the California State Bar recognizing Admiralty and Maritime Law as a speciality certification.

I brought this topic up at a meeting of the Long Beach Maritime Bar and have a growing roster of about 72 attorneys who have authorized me to include their names and bar numbers on the attached list of supporters. I am hopeful that the State Bar will soon begin the vetting process for certification of this speciality area of Admiralty and Maritime Law.

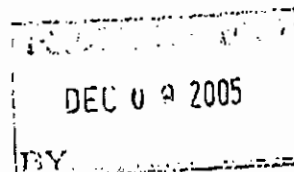
In the meantime, if I can be of any assistance in this process or supply you with additional information, please do not hesitate to contact me. I look forward to speaking from you in due course. Happy holidays, I remain

Yours very truly,

WYATT LAW OFFICES

Marva Jo Wyatt

MJW:jkw  
Enclosure



Board of Legal Specialization  
June 24, 2008  
Page 2

identify at least a few other individuals who oppose certification, but whose names nevertheless appear on the list. This letter should be given no weight.

I am certain that on his return, when he sees the December 8, 2005 letter, Mr. Booth will respond personally. However, I felt it necessary to advise the Board at this point in case the public comment period closes before his return. Mr. Booth is, and I think has always been, adamantly opposed to Admiralty & Maritime Law being certified by the State Bar.

Again, thank you for your attention to this letter, and for your service to the State Bar of California.

Very truly yours,



Ryan C. Donlon

cc: Forrest Booth

Enclosures

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June 24, 2008

VIA FACSIMILE & ELECTRONIC MAIL

Board of Legal Specialization  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
Fax: (415) 538-2180  
Email: [legalspec@calbar.ca.gov](mailto:legalspec@calbar.ca.gov)

Re: Admiralty & Maritime Law; Proposed Specialty Certification

Honorable Members of the Board of Legal Specialization:

Thank you for your service to the State Bar of California, and for your attention to this letter. I have written twice before (both enclosed for your convenient reference) to express my objection to the pending proposal that the State Bar of California certify Admiralty and Maritime Law as legal specializations. Since writing those letters, a new issue has come to my attention.

Today, I discovered a December 8, 2005 letter (enclosed) from Marva Jo Wyatt, Esq., to J. Scott Bovitz, who is identified as the Vice-Chair of the California State Bar. My understanding is that Ms. Wyatt is one of the leading proponents of certification for Admiralty and Maritime Law. There appears on the letter a stamp indicating that it was received on December 9, 2005. I have no personal information, however, as to whether this letter was, in fact, sent or received.

In the letter, the author states that after bringing "this topic up at a meeting of the Long Beach Maritime Bar ... about 72 attorneys ... have authorized [the author] to include their names and bar numbers on the attached list of supporters." My name, correctly, does not appear. However, the name of my boss, Forrest Booth, Esq. (then with Cozen O'Connor but now with my firm, Severson & Werson), does appear. I write on his behalf because he is out the state and incommunicado, and may not return until after the public comments period has expired.

I was not privy to any communications regarding certification between Mr. Booth and anybody else in 2005. Therefore, I do not know what, if anything, Mr. Booth then said about his opinion on certification. I can say, however, that he is unequivocally opposed to it. I know that he has written to the Board of Legal Specialization and personally appeared at one of its meeting in Oakland to voice his objection. His name should be stricken from this list. Indeed, I can

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July 7, 2008

**Via Facsimile(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.

First, I was surprised to recently learn that Marva Jo Wyatt included my name on a list of 72 supporters in a letter she sent to the State Bar in December, 2005. She did not have my authorization to use my name, and I do not support certification.

I have read Jennifer Tomlin Sanchez' letter on behalf of the Pacific Admiralty Section of the Bar Association of San Francisco and agree with all the reasons set forth in that letter that proposed certification of an admiralty specialty should not be approved. It is not needed, and is poorly drafted so that it will not help the public or the profession.

Very Truly Yours,

GIBSON ROBB & LINDH LLP

  
Michael J. Cummins

MJC:tpw

format of the ABA Model Rules of Professional Conduct.<sup>3</sup> On October 8, 2004, the Commission tentatively approved Proposed New Rule 7.4, which is nearly identical current ABA Model Rule 7.4. If formally approved by the California Supreme Court, new rule 7.4 will allow California lawyers engaged in Admiralty practice to use the designation "Admiralty," or "Proctor in Admiralty," or a substantially similar designation.

The Board of Legal Specialization's consideration of an admiralty and maritime specialty appears to be at odds with the Commission's position acknowledging that admiralty lawyers currently enjoy a distinction.

Very truly yours,



Courtney M. Crawford

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

could pass the test if it is as blatantly weighted to give the advantage to maritime personal injury lawyers as the proposed requirements.

**2. Certification is Impossible Because of the CLE Requirements.**

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

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

The only other alternative to satisfy the CLE requirement is to be a recent graduate of an accredited LLM in admiralty. The only ABA accredited LLM in admiralty is at Tulane Law School in Louisiana. Thus, the only qualified applicants for certification who are likely to qualify are recent Tulane Law School graduates. Of course, this would bar nearly every experienced maritime lawyer in California from certifying as a specialist, and would be inconsistent with the stated purposes of the Legal Specialization program to help the public identify attorneys proficient in a particular area of law.

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

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

The California State Bar Commission for the Revision of the Professional Rules of Conduct is currently engaged in revising California's rules to make them consistent with the

defendant vessel and provides security for the lien holder. The arrest in and of itself is not an “action” taken to a conclusion. In many cases, security in the form of a bond or a Letter of Undertaking is put up on behalf of an arrested vessel, and the vessel is then released. It is doubtful that the drafters of the proposed requirements intended accepting security for the release of an arrested vessel as the “conclusion”, though the vessel is released and the arrest concluded.

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

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

Rule B: In Personam Actions: Attachments and Garnishment

Rule D: Possessory, Petitory, and Partition Actions

Marine insurance is not adequately addressed. The few nods to marine insurance include task 2.2.8(e) awarding 15 points for drafting a marine insurance contract (something few if any maritime lawyers actually do), and task 2.2.9 awarding 10 points for giving written legal advice about marine insurance coverage. Maritime lawyers regularly perform tasks relating to marine insurance beyond advising their clients, including litigation of coverage disputes.

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

Marine pollution is not adequately addressed. The only credit is task 2.1.7 awarding 40 points to a principal attorney in a dispositive motion, arbitration, or trial of a pollution claim. Maritime attorneys act in many other areas involving pollution other than dispositive motions, arbitration, and trials. For example, many legal issues arose following the fuel oil spill of the COSCO BUSAN in November 2007, which are not addressed by the proposed requirements. Maritime environmental law is a significant practice area

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

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

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

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

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

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

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

- Task 2.1.8 awards 30 points for an “arrest of a vessel to the conclusion of the action.” As drafted, this does not make sense. A vessel may be arrested to enforce a maritime lien pursuant to FRCP, Supplemental Admiralty Rule C. (This is one of the “lettered” Federal rules cited as a basis for the need of an admiralty certification in California.) The arrest process obtains jurisdiction over a

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<sup>2</sup> Published by the Association of Marine Underwriters of San Francisco, Inc., second edition (2002).

July 8, 2008

**Via Email and Facsimile**

[legalspec@calbar.ca.gov](mailto: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.

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

1. **The Certification Requirements are Poorly Drafted.**

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

- Task 2.2.5 gives 30 points for preparing and filing a maritime personal injury complaint. There is no provision giving credit for answering or responding to a personal injury complaint. There is no provision giving points to an attorney who prepares and files any complaint other than one for personal injury.
- Task 2.1.6 allows 25 points for serving as a principal attorney in a dispositive motion, arbitration, or trial of a cargo case. As drafted, an attorney in a multi-million dollar cargo case could spend weeks in trial and earn less credit than an attorney who files a personal injury complaint, which can be done on a basic judicial council form complaint.

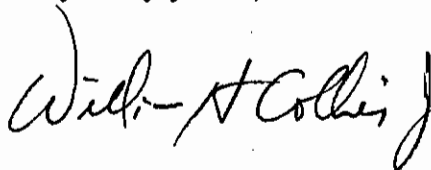
Board of Legal Specialization  
August 9, 2007  
Page 3

Re: Proposed Specialty Certification in Admiralty and Maritime Law

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.

For the foregoing reasons, I respectfully request that the Board reject the proposed maritime certification program.

Very truly yours,



William H. Collier, Jr.  
*william.collier@kyl.com*

WHC:smu (KYL\_LB1107718)

Re: Proposed Specialty Certification in Admiralty and Maritime Law

my knowledge, only one other state has adopted legal specialization of this field of law, and the experiment has proven to be a failure.

Further, establishing a legal specialization in maritime law would not be useful, either professionally or commercially. Generally, legal specialization is designed "to identify to the public attorneys who have demonstrated proficiency in the specialty fields and to encourage attorney competence." The ultimate goal in legal specialization is to protect potential clients from inexperienced attorneys. However, in the maritime context, most potential clients are sophisticated members of the shipping industry such as shipowners, charterers, shipbuilders, repairers, vessel and cargo underwriters, banks, and seamen's or harbor worker's unions. Such maritime industry participants are well versed in the legal issues that affect them and are readily familiar with the names of legal counsel who are competent to handle their particular needs. A program of specialization in maritime law serves no meaningful purpose other than to imply knowledge in such a wide variety of areas as to mislead the public about broad levels of purported competence which no lawyer can truthfully attest to having achieved.

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.

Historically, Bar Associations have not favored maritime certification programs. The American Bar Association (ABA) considered and rejected such a proposal in July 1980. In rejecting the proposed maritime specialization, the ABA deemed the program to be unnecessary given the sophistication of industry members, overreaching in terms of its scope, and difficult to implement given the breadth of the maritime field. Also, many states have considered similar proposals but only Florida has adopted a maritime specialty, with mixed results.

In closing, the proposed certification in admiralty and maritime law 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. To draft a new set of rules for such a specialty will do nothing to help the 99% of the marine industry which is

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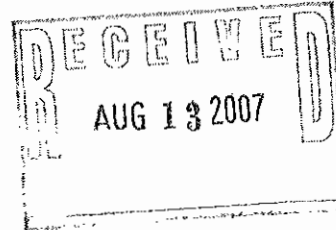
August 9, 2007

Via U.S. Mail & Facsimile (415) 538-2180

Board of Legal Specialization  
State Bar of California  
180 Howard St.  
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- \* SOLICITOR ADMITTED IN ENGLAND, WALES AND NORTHERN IRELAND

ALL OTHERS ADMITTED IN CALIFORNIA



Re: Proposed Specialty Certification in Admiralty and Maritime Law

Dear Board Members:

I have practiced maritime law for nearly 30 years – 27 of those have been in Long Beach. My firm has a large and diverse practice in the field which is primarily oriented to defense of matters involving issues ranging from personal injury to cargo to pollution. We represent primarily ship owners, marine underwriters and oil companies. I am writing to express my opinion that the proposed certification in admiralty and maritime law is unnecessary, and even potentially harmful to the public it purports to protect. I respectfully recommend that the proposed certification in admiralty and maritime law be rejected by the Board of Legal Specialization.

The field of admiralty and maritime law is as broad and diversified as it is specialized and unique. The field encompasses a vast range of issues including cargo claims, collisions, marine insurance, regulatory law of many types, charter party work, pollution law, maritime finance, and personal injury law of several distinct types. Within our own firm, we have lawyers who specialize in many of these areas, but more who “do it all.” The leading association of counsel in the area, The Maritime Law Association of the United States (MLA) has said that since admiralty and maritime law includes such diverse practice areas, “it can be stated conservatively that there is no admiralty or maritime lawyer fully qualified to represent clients in all phases of maritime practice.” The sheer breadth of maritime law forces practitioners to specialize in just one or a few of the specific areas mentioned above. 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. To

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**Add to Section 2.1:**

**2.1.14 Legal liability for freight, per diem, demurrage, detention, assessorial charges, bunker surcharges or other charges or assessments due pursuant to a tariff, schedule or bill of lading arising under the laws of the United States including, but not limited to 46 USCS, Section 40101 et seq. 30 points per matter. Maximum number of points in this category: 150 points.**

**Add to Section 2.2:**

**2.2.9 Providing substantive written legal advice or analysis to a client, claimant, or other interested party regarding Stevedoring and Marine Terminal Operations. 5 points per matter. Maximum number of points in this category: 35 points.**

**2.2.10 Providing substantive written legal advice or analysis to a client, claimant, or other interested party regarding the Shipping Act of 1984, Ocean Shipping Reform Act of 1998, the Harter Act or the Carriage of Goods by Sea Act. 5 points per matter. Maximum number of points in this category: 35 points.**

**Add to 2.2.8:**

**(i) Non-Exclusive Preferential Assignment Agreement or amendment(s) thereto; (j) Marine Terminal Facilities Agreements or amendment(s) thereto; (k) Marine Terminal Stevedoring and/or Terminal Service Agreement(s).**

**If you have any questions regarding the above please do not hesitate to contact the undersigned.**

Sincerely

  
Terry J. Coniglio

TERRY J. CONIGLIO, INC.

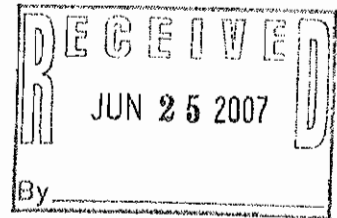
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TERRY J. CONIGLIO

ALSO ADMITTED IN THE  
DISTRICT OF COLUMBIA

June 22, 2007



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

RE: Admiralty and Maritime Law - Proposed Specialty Certification

Dear Sirs:

The undersigned has continually and predominately (over 90% of my practice) been involved in a law practice that encompasses "Maritime and Admiralty Law" as a California lawyer from 9<sup>th</sup> May 1980. Prior to that, beginning in August 1973, I worked for two (2) major steamship companies to wit, Sea-Land Service, Inc. and Seatrain Pacific Services, Inc. I am a "Proctor in Admiralty" member of the Maritime Law Association of the United States, as of 1981.

I personally **oppose** the creation of a legal specialist category of "Admiralty and Maritime Law". I believe that creating such a "specialization" category will in fact mislead the consumer. The practice of Admiralty and Maritime Law is so broad in scope and covers so many different types of cases, matters and subsets of competency, experience and specialties that arise within the field, that each practitioner in the subject practice area of law is actually very individually highly specialized in narrow aspects that encompass this practice area. 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 of "Admiralty and Maritime Law."

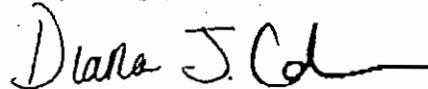
Notwithstanding my opposition, (and perhaps in support of my opinion that this category is overly broad) the following practice areas have been omitted from the Proposed Standards:

Board of Legal Specialization  
August 9, 2007  
Page 8

Re: Proposed Specialty Certification in Admiralty and Maritime Law

For the foregoing reasons, I respectfully request that the Board reject the proposed maritime certification program.

Very truly yours,



Diana J. Coburn  
[diana.coburn@kyl.com](mailto:diana.coburn@kyl.com)

IJC:bon (KYL\_LB1107688)

Board of Legal Specialization  
August 9, 2007  
Page 2

Re: Proposed Specialty Certification in Admiralty and Maritime Law

Further, establishing a legal specialization in maritime law would not be useful, either professionally or commercially. Generally, legal specialization is designed "to identify to the public attorneys who have demonstrated proficiency in the specialty fields and to encourage attorney competence." The ultimate goal in legal specialization is to protect potential clients from inexperienced attorneys. However, in the maritime context, most potential clients are sophisticated members of the shipping industry such as shipowners, charterers, shipbuilders, repairers, vessel and cargo underwriters, banks, and seamen's or harbor worker's unions. Such maritime industry participants are well versed in the legal issues that affect them and are readily familiar with the names of legal counsel who are competent to handle their particular needs. A program of specialization in maritime law serves no meaningful purpose other than to imply knowledge in such a variety of areas as to mislead the public about broad levels of purported competence which no lawyer can truthfully attest to having achieved.

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.

Historically, Bar Associations have not favored maritime certification programs. The American Bar Association (ABA) considered and rejected such a proposal in July 1980. In rejecting the proposed maritime specialization, the ABA deemed the program to be unnecessary given the sophistication of industry members, overreaching in terms of its scope, and difficult to implement given the breadth of the maritime field. Also, many states have considered similar proposals but only Florida has adopted a maritime specialty, with mixed results.

In closing, the proposed certification in admiralty and maritime law 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 in maritime law 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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THEODORE H. ADKINSON  
ESTHER H. CHO  
OLEN R. PIPER  
CATHERINE M. MORISSET \*

August 9, 2007

\* ADMITTED IN ALASKA  
\* ADMITTED IN WASHINGTON  
\* ADMITTED IN WASHINGTON & CALIFORNIA  
\* ADMITTED IN ALASKA & CALIFORNIA  
\* ADMITTED IN DISTRICT OF COLUMBIA & FLORIDA  
\* REGISTERED FOREIGN LAWYER WITH THE LAW SOCIETY  
OF HONG KONG & ADMITTED IN NEW YORK  
\* SOLICITOR ADMITTED IN ENGLAND, WALES AND  
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ALL OTHERS ADMITTED IN CALIFORNIA

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NANCY HARRISS \*  
FRANCES L. KEELER

via U.S. MAIL & FACSIMILE @ 415/538-2180

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

Re: Proposed Specialty Certification in Admiralty and Maritime Law

Dear Board Members:

I am writing to express my opinion that the proposed certification in admiralty and maritime law is unnecessary, and even potentially harmful to the public it purports to protect. I respectfully recommend that the proposed certification in admiralty and maritime law be rejected by the Board of Legal Specialization.

The field of admiralty and maritime law is as broad and diversified as it is specialized and unique. The field encompasses such a vast range of issues including cargo claims, collisions, marine insurance, regulatory law of many types, charter party work, pollution law, maritime finance, and personal injury law of several distinct types. The leading association of counsel in the area, The Maritime Law Association of the United States (MLA) has said that since admiralty and maritime law includes such diverse practice areas, "it can be stated conservatively that there is no admiralty or maritime lawyer fully qualified to represent clients in all phases of maritime practice." The breadth of maritime law forces practitioners to specialize in just one or a few of the specific areas mentioned above. 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. To my knowledge, only one other state has adopted legal specialization of this field of law, and the experiment has proven to be a failure.

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## **FACSIMILE**

**DATE:** 8/9/2007

**To:** Board of Legal Specialization  
**Firm:** State Bar of California  
**Fax:** 415/538-2180  
**Main No.:**

---

**From:** Diana J. Coburn

**Re:** Proposed Specialty Certification in Admiralty and Maritime Law

**NUMBER OF PAGES INCLUDING THIS SHEET:** Four (4)

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**MESSAGE:**

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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

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

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

Admitted: NY and CA

Office: 702-361-9010  
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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.

**Coleman, Charles L (SFR - X56970)**

---

**From:** PHILIP BERNS [pberns@embarqmail.com]  
**Sent:** Tuesday, July 01, 2008 3:43 PM  
**To:** legalspec@calbar.ca.gov  
**Cc:** MWYATT@WYATTLAW.US.COM; Jennifer Sanchez; PASSC@googlegroups.com; Coleman, Charles L (SFR - X56970); jsanchez@gibsonrobb.com; Vafidis, Matthew P (SFR - X56950); Forrest Booth; George Nowell  
**Subject:** Specialization Proposals--Admiralty  
**Attachments:** MLABoothCalSpecialty.doc

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

**EXHIBIT 3**

**(E-MAIL AND LETTER FROM PHILIP A. BERNS)**

# 5450116\_v1

**EXHIBIT 2**

**(Graydon S. Staring, THE PROCTOR'S DILEMMA:  
CERTIFYING SPECIALTIES IN ADMIRALTY,  
28 *Journal of Maritime Law & Commerce* 503 (1997))**

California Board of Legal Specialization

August 3, 2007

Page 3

(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

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.

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.

**Coleman, Charles L (SFR - X56970)**

---

**From:** Vafidis, Matthew P (SFR - X56950)  
**Sent:** Wednesday, July 02, 2008 10:44 AM  
**To:** 'Jennifer Sanchez'; 'PHILIP BERNS'; 'Underhill, Mike (CIV)'; Booth, Forrest; Coleman, Charles L (SFR - X56970)  
**Subject:** FW: Admiralty Specialization Proposal  
**Attachments:** 8-3-07 Letter to Board of Legal Specialization.pdf

---

**From:** Vafidis, Matthew P (SFR - X56950)  
**Sent:** Wednesday, July 02, 2008 10:42 AM  
**To:** legalspec@calbar.ca.gov  
**Subject:** Admiralty Specialization Proposal  
**Importance:** High



8-3-07 Letter to  
Board of Lega...

Dear Members of the Board of Legal Specialization

I write to express my continuing opposition to the proposal, as amended, to certify Admiralty as a specialty of the California Bar. In the interest of brevity, I am resubmitting herewith my letter of opposition sent to the Board on August 3, 2007 (without its enclosure). I also wish to express my agreement with the comment in opposition of the Pacific Admiralty section of the San Francisco Bar Association, sent in June 2008. I hope you will take these comments and our opposition into due consideration in making your decision. In reviewing the relevant materials and consultation with my colleagues, 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, and would encourage the Board to consider fairly all submissions on this subject.

Sincerely,

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

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**EXHIBIT 1**

**(E-MAIL AND LETTER FROM MATTHEW VAFIDIS)**

Board of Legal Specialization  
State Bar of California  
July 2, 2008  
Page 4

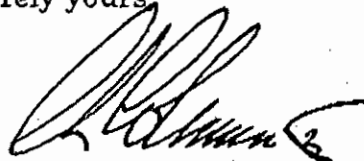
It appears that just about the only identifiable group of unsophisticated potential clients of an "admiralty and maritime" lawyer that might possibly benefit from being able to locate a "specialist" would be a handful of injured ferry or cruise ship passengers who find themselves both injured and in need of a California-based lawyer with some expertise in maritime personal injury claims. If this is the perceived need to be served by recognizing an area of specialization, then the only sensible solution (to avoid both confusion and gross unfairness to other maritime lawyers) would be to define the specialty much more narrowly and accurately, such as "Certified Maritime Personal Injury Lawyer". What does not make sense, however, is to subject the entire maritime bar to a purported California "specialization" that is denominated simply as "Admiralty and Maritime Law".

#### Conclusion

None of the fundamental conceptual problems with the admiralty and maritime specialization proposal are readily "fixable" by tweaking the wording of the proposal or by tinkering with the elaborate and contrived "points system" that has been proposed. Instead, and without intending any disrespect for the undoubted professional capabilities of the proponents of the proposal in their various maritime fields, the proposal should simply be abandoned.

Thank you for considering these comments. I submit them only on my own behalf, and I do not purport to speak for either my firm or any of its clients. Please let me know if I can provide any further information.

Sincerely yours,



Charles L. Coleman III  
(California State Bar No. 65496)

Enclosures/Exhibits (3)

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While the foregoing table is of course a bit simplistic (e.g., there are both federal and state rules of appellate procedure and criminal procedure, and both federal and state insolvency, franchise and tax laws), it is still a fair characterization overall. Compared to clients in these other areas of the law (e.g., criminal defendants or consumers contemplating a bankruptcy filing), the persons and entities that typically hire "admiralty and maritime" lawyers in California are a sophisticated group, although many of them (and the actual areas of law with which they are concerned) may have *little or nothing in common* with one another in terms of their actual needs for "specialized" knowledge. These include, for example: vessel owners; vessel charterers (including voyage charterers, demise charterers, etc.); ocean transportation intermediaries (i.e., ocean freight forwarders or non-vessel-operating common carriers)<sup>1</sup>; financial institutions holding ship mortgages; bar and inland pilots; equipment lessors (e.g., container lessors); ship yards; yacht marinas; marine underwriters; international Protection & Indemnity Clubs; public port authorities; wharf operators; marine terminal operators; Customs brokers; tug boat operators; marine salvage operators; marine surveyors; drayage companies hauling containerized cargoes to and from port areas; shippers' associations;<sup>2</sup> "conferences" of steamship lines operating under agreements filed with the U.S. Federal Maritime Commission;<sup>3</sup> shippers or consignees of goods moving by water (or by intermodal door-to-door arrangement) in interstate and foreign commerce; holders or issuers of Letters of Credit covering maritime cargoes; tank vessel, dry bulk, liquid bulk and neo-bulk operators; maritime multi-employer collective bargaining organizations; maritime unions and their members (e.g., members of the coastwide International Longshore and Warehouse Union); U.S. Coast Guard-certified passenger and ferry operators; foreign cruise ship operators; sellers or packagers of cruises to or from U.S. ports; oil spill response organizations; state and federal resource agencies; and public interest organizations concerned with water quality and marine environmental issues. The point is that these maritime clients "know the waterfront" but they are a disparate group, so that having the State Bar of California purport to "certify" a single group of "specialists" to meet the legal needs of such a diverse group is a meaningless and potentially counterproductive and unfair exercise.

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<sup>1</sup> See 46 U.S.C. App. § 1702(17).

<sup>2</sup> *Id.*, § 1702(22).

<sup>3</sup> *Id.*, § 1702(7).

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The whole idea of having the State Bar of California issue "Standards for Certification and Recertification in Admiralty and Maritime Law" seems to me to be fundamentally misconceived, for at least three reasons: (1) "Admiralty and Maritime law" laws that are entirely federal and international without any particular "California" nexus; (2) "Admiralty and Maritime law" in fact includes a myriad of sub-areas, many of which have little in common with one another other than that they pertain to the same industry, so that being a "specialist" in one sub-area does not provide any assurance of competence in another, and it is both impractical and virtually unheard-of to have any one lawyer be competent in all such areas; and (3) With limited exceptions, the vast majority of the clients seeking California lawyers familiar with various aspects of "Admiralty and Maritime law" are sophisticated users of legal services and not the California individual consumers who would typically benefit from locating a "certified specialist" in the fields in which they seek legal advice.

The current areas of recognized California State Bar certification reflect the idea that certification is appropriate for areas of the law that have one or more of the following characteristics: (A) They are areas of law in which many or most of the consumers of the legal services are either individuals or small businesses; (B) The areas of law that are certified are reasonably discrete, so that expertise in the entire area is likely to be acquired by persons who devote much or all of their practice to that area; and/or (C) Lawyers cannot competently practice in the area without being familiar with the specific features of California state law that govern that area. This is reflected in the current list of specializations recognized by the Board, which have the following common characteristics, versus "admiralty and maritime law", which has none of them:

<i>Area of Law</i>	<i>Indiv.(Small)Clients</i>	<i>Discrete Area</i>	<i>California Law</i>
Appellate	Yes	Yes	Yes
Bankruptcy	Yes	Yes	No
Criminal	Yes	Yes	Yes
Estate, Trust, Prob.	Yes	Yes	Yes
Family	Yes	Yes	Yes
Franchise & Distr.	Yes	Yes	Yes
Immig./Nationality	Yes	Yes	No
Taxation	Yes	Yes	Yes
Workers' Comp.	Yes	Yes	Yes
"Admiralty/Mar."	No	No	No

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July 2, 2008

**Via E-Mail and Facsimile:**

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

Re: Proposed California Legal Certification for Admiralty and  
Maritime Law; Letter of Opposition

Dear Members of the Board:

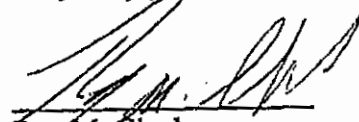
I am an active member of the State Bar of California (Bar No. 65496) and have been continuously since 1975. During much of my legal career, and from time to time currently, I have provided advice and representation to companies engaged, in one way or another, in the oceanborne foreign commerce of the United States or in the U.S. domestic offshore trades. I write to express my opposition to the proposed certification, by the Board of Legal Specialization of the State Bar of California, of a specialty in "Admiralty and Maritime Law".

In order to avoid repetition, I would like to associate myself with, and to incorporate by this reference, the comments in opposition to the California Admiralty and Maritime "specialization" idea from three members of the California bar whose lengthy and distinguished careers have been substantially devoted to the practice of admiralty and maritime law, principally in California but also (as is common for admiralty and maritime lawyers) in numerous other jurisdictions outside California. The comments in opposition to the notion of specialization to which I refer remain applicable to the current (reformulated) proposal and are from: (1) Matthew P. Vafidis, whose e-mail of July 2 and letter of August 3, 2007 are attached as Exhibit 1 hereto; (2) Graydon S. Staring, whose article on this subject was enclosed with Mr. Vafidis' letter and was published at 28 *Journal of Maritime Law & Commerce* 503 (July, 1997) (copy attached as Exhibit 2 hereto); and (3) Philip A. Berns, whose e-mail of July 1, 2008 and letter of March 1, 2008 are attached as Exhibit 3 hereto. I also join in the June, 2008, comments in opposition to the proposal submitted by the Pacific Admiralty section of the San Francisco Bar Association and respectfully add the following further comments of my own in opposition to the proposal:

Against this background the Board appears to be attempting to craft a specialty which emphasizes the accumulation of points for a variety of tasks but without a genuine reflection of what is truly required to be considered a maritime law specialist. I have recently read many letters to the Board which thoroughly address these concerns. I strongly join in and support their comments. As proposed, this would not serve the interest of the public or the bar.

I therefore urge the Board to seriously consider the opinion of the MLA, the PAS and others in opposition to the proposed rule for certification and reject this proposal.

Very truly yours,



Rex M. Clack  
STERLING & CLACK

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July 11, 2008

VIA EMAIL & FACSIMILE

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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:

Please accept this public comment against the proposed certification of a specialty for admiralty and maritime law in California.

It is my understanding that both the Maritime Law Association of the United States ("MLA") and the Pacific Admiralty Seminar Committee of the Bar Association of San Francisco ("PAS") have opposed the proposal for a maritime specialty certification. As a maritime lawyer of some 29 years I join in the criticisms by those organizations, and many of my colleagues, with regard to the proposal.

First, there is the question whether the proposed specialization is actually needed, particularly in light of the role played by the MLA. The maritime bar in California, and in fact nationwide, is very small relative to most other areas of law practice. Maritime law has developed slowly over time and as such is learned through law practice and exchanges with other maritime practitioners. The MLA has served the maritime bar for over 100 years. Its endeavors reflect the way that this area of law is learned by practitioners. In addition to having associate members, the MLA recognizes those practitioners with expertise in maritime law by bestowing on them Proctor status. I have been a Proctor since 1984. Among other requirements, Proctor status may only be achieved through demonstrated commitment to, and experience in maritime law, the recognition of fellow Proctor members, and evidence of significant participation in maritime trials or other legal proceedings. It has long been recognized in the maritime bar that Proctor status is a well earned recognition of expertise in admiralty and maritime law.

type of *ad hoc* and advocacy-driven approach to rulemaking is appropriate, when it comes to the establishment of a set of rules that will affect an entire group of professionals,<sup>2</sup> it is exactly the wrong approach.

Even though the Board has apparently never reached out to the maritime bar as a whole (apart from *pro forma* notices which cannot be considered anything but letter-of-the-law due process), the opinions it has received, outside the small group of proponents, appear to have been largely, if not universally, negative.

To my knowledge, there are only two formal organizations which are devoted to maritime law with members in California. One is the PAS; the other is the MLA, which, though a national organization, has more than 200 California members. Both of these organizations have opposed the very concept of specialization, again for reasons that are already before this Board. The PAS has also "looked under the hood" of the proposal and detailed just how arbitrary the set of criteria is that would be inflicted upon California maritime lawyers who would seek specialization under the proposed rule.

It appears that I would have little problem obtaining specialization under these proposed rules due to the composition of my practice. However, many of my peers, who command great respect and who are generally and widely acknowledged to be "maritime lawyers," would likely find obtaining specialization a great challenge due to their client base and/or the current focus of their practice. How ironic and sad that a collegial community that has existed for more than a century as the "maritime bar" would suddenly find itself split in half by an externally imposed, unnecessary and yet undeniably "official" set of rules that, for no good reason, happens to favor some of us at the expense of others.

While neither PAS nor MLA purports to speak for all California maritime lawyers, each has earned the right to speak with authority for the majority of its members, and on the topic of maritime law in general. Their opinions in opposition to the proposed rule should be given great weight, both for their substance, and for the large number of California maritime lawyers for whom these organizations speak.

Very truly yours,



Conte C. Cicala

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<sup>2</sup> While specialization may be voluntary, it is clear that all maritime practitioners will be forced to choose between obtaining specialization or risk being placed at a competitive disadvantage.

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June 25, 2008

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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.

Jennifer Sanchez, on behalf of the Pacific Admiralty Seminar Committee of the Bar Association of San Francisco ("PAS"), has submitted a letter which details the many problems with the proposal. The Maritime Law Association of the United States ("MLA") has also opposed the proposal. I am a member of both organizations, concur with their positions, and will not repeat their arguments here. However, I do make a few additional points.

First, there has been no methodical inquiry by the Board into whether such a specialization is warranted, or how it should manifest in a way that would serve consumers of maritime law services. For example, the Board has never made any concerted effort to identify the practicing maritime lawyers in the state, let alone to seek out the opinions of a broad cross-section of practitioners. Rather, it has allowed this proposal to advance stage after stage based primarily on the advocacy of a few proponents.<sup>1</sup> While there may be circumstances where this

<sup>1</sup> It is my understanding that several, if not many, opponents of this proposal have been erroneously identified to this Board as supporters of it, including without limitation Ms. Sanchez. Thus, the group of actual supporters/proponents may be significantly smaller than this Board presently believes it to be.

July 30, 2007

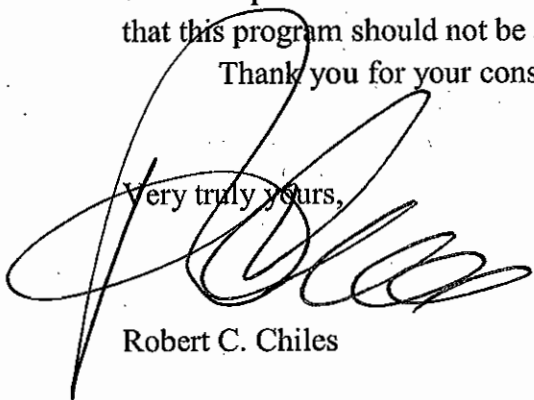
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experience almost all such agreements are based on pre-existing forms that have been modified over the years. However, from time to time a serious revision is involved. It appears from §2.2.8 that minor changes to a standard form would be rated equally with a major revision. That hardly seems to be a well balanced provision. Other provisions suffer from a similar weakness where the difficulty is in weighing the significance of a particular activity.

In conclusion I do not see the need for the State Bar to certify individuals as admiralty or maritime specialists and I do not see how the public will be benefitted by such a certification. 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. I recommend that this program should not be adopted.

Thank you for your consideration.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'R. Chiles', is written over the text 'Very truly yours,'.

Robert C. Chiles

impressed by the concept then and still am not because I do not see a reason for such a classification. As I see it, the purpose of certification by the State Bar 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. Therefore I question the need to certify this class of professional specialists.

As I view the issue, there are probably four types of people who utilize marine lawyers – marine insurers, ocean carriers and related businesses, labor unions and personal injury plaintiffs. The latter can be divided into two categories: marine employed workers who may have rights under the Jones Act, the Longshoreman and Harbor Workers' Act or who are entitled to similar protections and members of the general public who are injured in a marine setting, i.e., recreational boat accidents or on board a cruise vessel, etc. It is most likely persons in the latter group who will have the greatest difficulty in locating a qualified practitioner. After looking at the standards for certification I do not see how those standards would meet or help address that need.

With that as a segue, I turn to the certification requirements. It appears that the certification requirements were drafted to meet the needs of a very narrow class of marine practitioners. Although I know a number of very competent maritime practitioners, I suspect few of them would meet the 300 points required within the last five years.

I am surprised to see that a significant number of points are given to the handling of LHWCA matters (150 points) or to someone who has appeared before the U.S. Department of Labor (also 150 points). Experience in those two areas is outside the scope of "bread and butter" maritime matters and yet someone with minimal maritime experience in other areas could fully qualify as a maritime specialist if they have requisite LHWCA or Department of Labor experience.

I am also surprised at the educational requirements. Apparently, an attorney who had received an LLM in maritime law six years or more prior to the application would not qualify even though that individual had substantial maritime experience while a more junior person with less maritime experience would qualify because she or he had graduated within the past five years. This makes no sense and it concerns me that the rules are being written to serve a specific constituency with less experience.

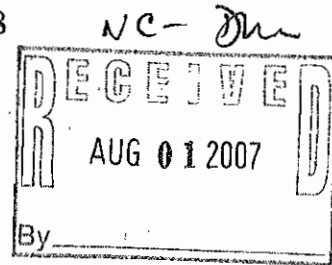
It is obvious that the draft standards ignore the area of marine insurance which has its own special characteristics and is an important area in maritime law if for no other reason than because marine insurance usually pays many of the bills incurred in marine litigation.

Increasingly, there has been a movement for arbitration in maritime disputes. There is no provision for a practitioner to meet the requirements of the sections by participating in such arbitrations. I also note with respect to §2.2.8 regarding preparing maritime contracts that most contracts listed are rarely, if ever, prepared *ab initio*. In my

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July 30, 2007



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

RE: Admiralty and Maritime Law – Proposed Specialty Certification

Ladies and Gentlemen:

This letter sets forth my comments regarding the proposed specialty certification of admiralty and maritime law and the standards which have been proposed for such certification.

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, in my opinion, arguable. I am of the opinion that the public has been well served by competent legal assistance in this area for many years without such certification.

By way of introduction, I have been practicing maritime law since 1974. Since that time, I have handled a broad range of maritime legal matters including cargo, both from the plaintiff and the defense standpoint, and maritime casualties including collisions, allisions, catastrophic equipment failure and the like. My representation includes both plaintiffs and defendants in marine personal injury actions and both insurers and insureds in marine insurance disputes. I have handled limitation actions both for the plaintiff and the defense. I have defended a number of marine officers in license proceedings before both the United States Coast Guard, the San Francisco Board of Pilot Commissioners and the NTSB. I have represented a number of maritime lien creditors in the large maritime bankruptcies which took place in the 70's and 80's including those of Pacific Far East Lines, States Lines and U.S. Lines. I have also defended cases involving oil pollution in navigable waters. In addition I have drafted a number of maritime contracts including preferred ship's mortgages and have handled all the contracting including the financing documents for the planning, development, purchase and financing of marine commercial vessels for several clients. On several occasions I have been asked to act as a mediator in maritime legal disputes. The point of the above recitation is to give you the perspective from which I present you with my comments.

I recall being approached some time ago about submitting a favorable statement on the idea of a certification by the State Bar in Admiralty and Maritime Law. I was not

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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.<sup>3</sup> On October 8, 2004, the Commission tentatively approved Proposed New Rule 7.4, which is nearly identical current ABA Model Rule 7.4. If formally approved by the California Supreme Court, new rule 7.4 will allow California lawyers engaged in Admiralty practice to use the designation "Admiralty," or "Proctor in Admiralty," or a substantially similar designation.

The Board of Legal Specialization's consideration of an admiralty and maritime specialty appears to be at odds with the Commission's position acknowledging that admiralty lawyers currently enjoy a distinction.

Regards,



Marc T. Cefalu  
COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP

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

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• Marine pollution is not adequately addressed. The only credit is task 2.1.7 awarding 40 points to a principal attorney in a dispositive motion, arbitration, or trial of a pollution claim. Maritime attorneys act in many other areas involving pollution other than dispositive motions, arbitration, and trials. For example, many legal issues arose following the fuel oil spill of the COSCO BUSAN in November 2007, which are not addressed by the proposed requirements. Maritime environmental law is a significant practice area

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

## 2. Certification is Impossible Because of the CLE Requirements.

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

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

The only other alternative to satisfy the CLE requirement is to be a recent graduate of an accredited LLM in admiralty. The only ABA accredited LLM in admiralty is at Tulane Law School in Louisiana. Thus, the only qualified applicants for certification who are likely to qualify are recent Tulane Law School graduates. Of course, this would bar nearly every experienced maritime lawyer in California from certifying as a specialist, and would be inconsistent with the stated purposes of the Legal Specialization program to help the public identify attorneys proficient in a particular area of law.

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

Admiralty, along with patent law, is already recognized by the ABA model rules of professional responsibility. Rule 7.4 (c) provides that "a lawyer engaged in Admiralty

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

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

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

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

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

Marine insurance is not adequately addressed. The few nods to marine insurance include task 2.2.8(e) awarding 15 points for drafting a marine insurance contract (something few if any maritime lawyers actually do), and task 2.2.9 awarding 10 points for giving written legal advice about marine insurance coverage. Maritime lawyers regularly perform tasks relating to marine insurance beyond advising their clients, including litigation of coverage disputes.

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

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provision giving points to an attorney who prepares and files any complaint other than one for personal injury.

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

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

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

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

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

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

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<sup>2</sup> Published by the Association of Marine Underwriters of San Francisco, Inc., second edition (2002).

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**July 11, 2008**

**VIA Email and Facsimile**

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Re: Proposed Specialty Certification in Admiralty and Maritime Law

Dear Boardmembers:

I am a Partner at the law firm of Cox, Wootton, Griffin, Hansen & Poulos, LLP. I am also a member of the Maritime Law Association of the United States. I primarily practice maritime law with an emphasis on personal injury matters, cargo claims and maritime casualties such as groundings, collisions and allisions. This is a public comment *against* the proposed certification of a specialty for admiralty and maritime law in California.

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

1. The Certification Requirements are Poorly Drafted.

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

Task 2.2.5 gives 30 points for preparing and filing a maritime personal injury complaint. There is no provision giving credit for answering or responding to a personal injury complaint. There is no