

# AGENDA ITEM

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Proposed Amendments to  
Standards for Certification  
in Admiralty and Maritime  
Law re Alternative to the  
Exam – Return from Public  
Comment

**DATE:** June 29, 2010

**TO:** Members, Board of Governors  
Members, Board Committee on Member Involvement Relations & Services

**FROM:** Stafford Matthews, Chair, Board of Legal Specialization  
Gayle Murphy, Senior Executive, Admissions

**SUBJECT: PROPOSED AMENDMENTS TO STANDARDS FOR CERTIFICATION IN  
ADMIRALTY AND MARITIME LAW RE ALTERNATIVE TO THE EXAM –  
RETURN FROM PUBLIC COMMENT**

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## EXECUTIVE SUMMARY

Section 8.6 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists, provides that, within the first two years of a new specialty, applicants may satisfy additional requirements in lieu of passing a written examination. The alternative requirements must be included in the standards for certification for that specialty. Proposed amendments to the Standards for Certification and Recertification in Admiralty and Maritime Law (Standards), which establish the additional requirements that legal specialization certification applicants must satisfy in lieu of passing a written examination, were circulated for a 45-day public comment period. No comments were received. The Board of Legal Specialization requests that the Board Committee recommend to the Board that the proposed amendments to the standards be approved and that the Board approve them.

## BACKGROUND

Based upon a national review of certification by the American Bar Association (ABA) when it began accrediting specialty certification programs following the Peel decision in 1991, the ABA determined that all accredited programs should contain an examination component. The ABA, however, continues to study alternative methods of evaluating a specialist's proficiency. The ABA's activities and the recent creation of new specialties prompted the Board of Legal Specialization (BLS) to revisit the issue. The BLS

determined that at least in the early years of a new specialty, alternatives to the examination requirement should be made available. With regard to the newest specialties, which have been approved by the Board of Governors, alternatives to the examination requirements have been adopted for Franchise and Distribution Law and Legal Malpractice Law; alternatives to the examination for Admiralty and Maritime Law remain pending.

Until 1996, applicants seeking State Bar of California legal specialization certification had the option of satisfying additional requirements in lieu of passing a written examination. During an extensive overhaul of the program's regulatory scheme and rules, the BLS determined that applicants should be held to a uniform standard and the alternative was eliminated as an option. Adding new specialty areas, however, highlighted the dilemma of those attorneys closely involved in developing and administering the new specialty. Attorneys appointed to the Advisory Commission of any new specialty area are immediately given the task of developing a written examination for that area, which then precludes them from taking the first examination. After spending a great deal of time and energy in bringing a new specialty to fruition, the specialists most interested in certification are faced with the prospect of either delaying certification for several years or removing themselves from the examination development process even though they are often among the best candidates for that task. The BLS wanted to provide those specialists with another way of qualifying for certification and also believed (and still does) that an alternative to the examination encourages greater participation in a new area by those persons who are recognized in a specialty area because of their extensive experience, which is instrumental in getting a new specialty established.

During its December 8, 2006, meeting, the BLS determined that alternatives to the examination requirement should be allowed for new specialty areas only, and that the alternatives only be available for the first two years of a new specialty. In May 2008, the Board of Governors approved amendments to the Rules Governing the State Bar of California Program for Certifying Legal Specialists to include a new section 8.6, which provides that, within the first two years of a new specialty, applicants may satisfy additional requirements in lieu of passing a written examination.

In November of 2008, the Board of Governors approved the establishment of Admiralty and Maritime Law as a new certified legal specialty and adopted the Standards for Certification and Recertification in Admiralty and Maritime Law. The proposed alternative requirements to the written examination were determined by the Admiralty and Maritime Law Advisory Commission, which were incorporated into the Standards, and then approved by the BLS during its February 2010 meeting, subject to a public comment period and final approval.

The proposed amendments to the standards were circulated for a 45-day public comment period; no comments were received. During its meeting on Friday, June 25, 2010, the BLS adopted the proposed amendments, subject to approval by the Board of Governors. Attached is a copy of the proposed amendments to the Standards.

## **ISSUE**

Whether the Board Committee should approve the proposed amendments to the Standards for Certification and Recertification in Admiralty and Maritime Law.

## **FISCAL/PERSONNEL IMPACT**

Minimal. Attorneys who might have otherwise taken an examination will not if they are able to meet the requirements for the alternative, which would impact the revenue received from fees. On the other hand, there might be more attorneys applying for the new specialty because of the availability of an alternative, which could positively impact the amount of fees received from applicants seeking certification.

## **RULE AMENDMENTS**

If approved by the Board of Governors, the Standards for Certification and Recertification in Admiralty and Maritime Law, which must be read in connection with the Rules Governing the State Bar of California Program for Certifying Legal Specialists, must be amended.

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

None.

## **RECOMMENDATION**

If the Board Committee agrees that the proposed amendments to the Standards for Certification and Recertification in Admiralty and Maritime Law should be approved, the following resolution is recommended for adoption:

### **PROPOSED BOARD COMMITTEE RESOLUTION:**

RESOLVED, upon recommendation from the Board of Legal Specialization, that the Board Committee on Member Involvement Relations & Services recommends that the Board of Governors approve the proposed amendments to the Standards for Certification and Recertification in Admiralty and Maritime Law, in the form attached hereto, effective July 24, 2010.

### **PROPOSED BOARD RESOLUTION:**

RESOLVED, upon recommendation from the Board Committee on Member Involvement Relations & Services, that the Board of Governors hereby approves the proposed amendments to the Standards for Certification and Recertification in Admiralty and Maritime Law, in the form attached hereto, effective July 24, 2010.