

# CALIFORNIA BOARD OF LEGAL SPECIALIZATION

OF THE STATE BAR OF CALIFORNIA

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**DATE:** September 4, 2008

**TO:** Members of the Board Committee on Operations

**FROM:** Alice W. O'Sullivan, Chair, Board of Legal Specialization  
Phyllis J. Culp, Director, Office of Special Admissions and Specialization

**SUBJECT:** Proposed Standards for Certification and Recertification in Legal Malpractice Law  
– Request for Public Comment

**ATTACHMENT:** 1. Proposed Standards for Certification and Recertification in Legal Malpractice Law

## EXECUTIVE SUMMARY

The Board of Legal Specialization (BLS) requests that the Board Committee authorize publication of proposed Standards for Certification and Recertification in Legal Malpractice Law (Standards), as set forth in the attachment to this memorandum, for a 45-day public comment period.

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

The BLS decided to consider a certification program in Legal Malpractice Law after being approached by a practitioner in that area on behalf of himself and several other recognized leaders in the field. The practitioners believe that certification in the area of legal malpractice would enhance attorney competence and provide a higher degree of consumer protection. They also indicate support from several judges who have presided over legal malpractice suits with whom they have discussed the idea of a legal malpractice specialty.

At the request of the BLS, the Board of Governors created a consulting group to examine the feasibility of, and develop standards for, certifying legal specialists in the area of legal malpractice law. The Legal Malpractice Law Consulting Group recommends that the BLS go forward with the proposed specialty and has developed the attached Standards to be circulated for public comment.

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

## **BACKGROUND**

The Legal Specialization program is a Supreme Court approved method of certifying attorneys as specialists in particular areas of law. Certification validates an attorney's specialty through comprehensive testing, completion of rigorous task and experience requirements, and peer review by fellow attorneys and bench officers. That validation process serves two important needs: improving the level of practice for attorneys who participate in the certification program, and assisting consumers in identifying lawyers whose procedural and substantive skills match a consumer's specific legal needs. Formal certification also protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading to the public.

The BLS administers the program, which is completely self-funded. Over the past 35 years, the program has expanded to provide certification in nine fields: Appellate Law, Bankruptcy Law, Criminal Law; Estate Planning, Trust and Probate Law, Family Law, Franchise and Distribution Law, Immigration & Nationality Law, Taxation Law, and Workers' Compensation Law.

The BLS is tasked with creating new specialties and recommends that a Legal Malpractice Law specialty be considered. In May of this year, the BLS was contacted by Mr. James A. Murphy on behalf of himself and several recognized leaders in the field of legal malpractice with the request that the BLS consider certification in that specialty field.

## **DISCUSSION**

Mr. Murphy's letter referenced the fact that the State Bar has accredited the American Board of Professional Liability Attorneys' certification program in legal malpractice and noted that he is certified by that entity. However, he believes that it is important for the State Bar to establish its own certification program, stating:

California's Rules of Professional Conduct, while similar in many respects to the American Bar Association's Rules of Professional Responsibility, are distinguishable in many significant and sometimes subtle respects. While our California rules state they are not intended to create civil causes of action, in legal malpractice cases experts routinely rely on these rules in opining on the standards of practice for attorneys. In addition, in its Business and Professions Code, Civil Code, and Code of Civil Procedure California has numerous statutes related to these rules and to the practice of law in this state. It is important for any attorney representing a claimant or a lawyer in a legal malpractice case to be extremely conversant with California's own rules and statutes.

Mr. Murphy's letter goes on to say that certification in the area of legal malpractice would enhance attorney competence and provide a higher degree of consumer protection, noting that "[w]ithin the last 15 years there has been an explosion in legal malpractice cases, and the general public, as well as the Bar, would be greatly served through the engagement of lawyers certified as specialists in California legal malpractice claims." He also notes that several judges who have presided over legal malpractice suits have discussed the idea of a legal malpractice specialty with him and other recognized practitioners in the field and "are unanimous in endorsing this specialization."

The Legal Malpractice Law Consulting Group is composed of prominent practitioners in the field who developed the attached Standards that we are now requesting be published for public comment. The Consulting Group is recommending that the BLS go forward with the proposed specialty in Legal Malpractice Law.

**LENGTH OF PUBLIC COMMENT PERIOD AND REASON**

We are requesting the standard 45-day public comment period, which should be a sufficient amount of time in which to distribute the information to interested parties.

**EFFECTIVE DATE OF PROPOSAL**

We will ask that the Standards be effective as of the date the Board acts to approve them.

**FISCAL AND PERSONNEL IMPACT**

The Legal Specialization program fund has sufficient revenue to cover any administrative costs. There is no fiscal and personnel impact on the general fund.

**BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

None.

**RULE AMENDMENTS IMPACT**

None.

**RESOLUTION**

Should the Board Committee determine to adopt the recommendation of the BLS, it would be appropriate to adopt the following resolution:

**RESOLVED**, that the Board Committee on Member Oversight directs the publication of proposed Standards for Certification and Recertification in Legal Malpractice Law, in the form attached to these minutes and made a part hereof, for a 45-day comment period; and it is

**FURTHER RESOLVED** that publication of the foregoing is not, and shall not be construed as, a recommendation by the Board Committee.