

Civil Litigation Specialist - Time to Comment

By Richard Alexander, Esq.
San Jose

On Saturday, April 9, the State Bar Board of Governors agreed to request comments from California lawyers on a new civil litigation specialty.

The specialization program has been in preparation nearly ten years. Throughout that period, the Board of Legal Specialization and the Civil Litigation Consulting Group have consistently and overwhelmingly voted that civil litigation should be recognized as a specialty by the State Bar.

The goal is to benefit the public by identifying qualified civil litigators. It is not easy to devise a set of standards that is fair to both personal injury lawyers and business litigators. The attached proposal strikes a balance that has been found to be fair by trial lawyers. This program will allow the public to identify and contact a lawyer who is capable of evaluating and handling a civil claim.

Please share this proposal with your local bar association and your colleagues.*

DRAFT

STANDARDS FOR CERTIFICATION AND RE-CERTIFICATION OF CIVIL LITIGATION LAW SPECIALISTS

Pursuant to the authority vested in the California Board of Legal Specialization (the "Board") by the Board of Governors of the State Bar of California, the Board prescribes the following standards and requirements for certification and recertification of civil litigation specialists. These standards are in accord with the State Bar of California Program for Certifying Legal Specialists established by the Board of Governors and approved by the California Supreme Court.

No provision herein contained shall in any way limit the right of a certified



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civil litigation law specialist to practice law in all fields or to act as counsel in any legal matter. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he or she is certified as a civil litigation law specialist.

No lawyer shall be required to obtain a certificate as a civil litigation law specialist before he or she can practice law in the field of civil litigation law or act as counsel in any particular type of civil litigation case. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in the field of civil litigation law and to act as counsel in every type of civil litigation case, even though he or she is not certified as a civil litigation specialist.

I. GENERAL REQUIREMENTS.

Every applicant for certification and recertification as a specialist in civil litigation law shall be required to complete an application as provided in the Rules and Regulations of the Board, furnish such additional and supplemental information relating to proficiency in the civil litigation law specialty as may be required by the Board or the Civil Litigation Advisory Commission (the "Advisory Commis-

sion"), and comply with all Rules and Regulations of the Board.

A. Supplementary Information.

The Board or Advisory Commission may require an applicant to submit information in addition to that required on the application form.

In the event that documents requested by the Advisory Commission involve confidential matters, the Advisory Commission may request a summary indicating the issues involved, the problems perceived and the resolution by the applicant. Such a summary shall be on a form furnished by the Advisory Commission.

B. Recommendation to the Board.

An applicant shall be recommended to the Board for certification or recertification when the applicant is found to have complied with the applicable standards by no fewer than five (5) members of the Advisory Commission.

C. Expiration of Certification.

A certificate of specialization shall expire five (5) years after the date thereon; provided that if timely application for recertification is made as provided in the Rules and Regulations of the Board, the certificate shall remain in effect until the Board has acted upon the application. Recertification shall be required every five years.

A certified specialist whose certification period is interrupted by judicial service may, on approval by the Board, be permitted to apply for recertification even though more than five (5) years has elapsed since the prior certification.

D. Substantial Compliance.

The Advisory Commission may, in exceptional circumstances, determine that a re-

* Your review and comment will be shared with the Board of Governors by addressing your letters to the author at P.O. Box 15001, San Jose, 95115-0001.

quirement not mandated by the Rules and Regulations or by The Program has been satisfied by compliance with a substantially more stringent equivalent.

Except as prohibited by the Rules and Regulations of the Board, the Advisory Commission may from time to time by resolution determine that the meeting of standards, at least equivalent to the standards of this program promulgated by other professional organizations, satisfies one or more of the regulations hereunder.

E. Program Liaison

A certified specialist shall be available to act as a "specialization program liaison" (hereinafter "liaison") for one or more candidates in the civil litigation law specialization program. As such, the liaison shall be responsible for an annual review and evaluation of the candidate and for such other responsibilities set forth herein. Communications between candidates and their liaisons shall be deemed to be communications within the meaning of Section 952 of the Evidence Code.

II. STANDARDS FOR CERTIFICATION

A. General.

1. An applicant shall at the time of application for certification be an active member, in good standing, of the State Bar of California.
2. Certification can be obtained in the following ways:
 - a. For the first five years of the program, applicants qualify by meeting the requirements of paragraph II.C, D, E, and F or G.
 - b. Thereafter, applicants must also meet the requirements of paragraph II.B.
3. Persons preparing to apply for certification during the first 5 years of the program are encouraged to participate in the candidacy program under paragraph II.B.

B. Candidacy Program

Applicants are encouraged to enroll in the following candidacy program.

DATE OF THESE STANDARDS ALL APPLICANTS FOR CERTIFICATION MUST SATISFY THESE CANDIDACY REQUIREMENTS.

[OR]

WITHIN FIVE YEARS AFTER THE EFFECTIVE DATE OF THESE STANDARDS, THE BOARD SHALL REVIEW THE CANDIDACY PROGRAM TO DETERMINE WHETHER IT SHOULD BECOME MANDATORY THEREAFTER.

1. Enrollment. To become a participant in the candidacy program the applicant shall register with the Advisory Commission.
2. A candidate must have a liaison who is either:
 - a. A certified civil litigation specialist; or
 - b. A member of the California State Bar who is substantially engaged in civil litigation, and who is accepted as a liaison by the Advisory Commission.
3. A candidate may have more than one liaison at any one time and may substitute liaisons upon notice to the Advisory Commission (and Advisory Commission acceptance in the event the substitute liaison qualifies under II.B.2.b. above).

4. A liaison must agree to verify participation by the candidate in activities of the program which require a liaison.

Candidates must provide their own liaisons; but the Advisory Commission will use its best efforts to assist in locating liaisons on request.

5. A candidate shall submit annual reports, on prescribed forms, to the Advisory Commission, describing participation in program activities. Reports must be verified by the candidate's liaison.

6. Task And Experience Requirements During Candidacy.

a. Before certification, each candidate must have fulfilled all of the requirements of Section II.C. below.

b. The candidate shall have the liaison review at least

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(NOTE: Comment is invited on the following *alternative* provisions)

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annually, the candidate's practice in civil litigation.

c. The candidate shall have the liaison attend and critique the candidate's performance in two (2) trials, one of which shall be a jury trial. The candidate shall cause the liaison to attend a sufficient portion of those two trials to give an informed critique of the candidate's performance.

d. The candidate shall cause the liaison to review and critique: (1) at least five (5) law and motion briefs prepared primarily by the candidate; (2) at least six (6) depositions of the kind described in I.I.C.5. taken by the candidate and (3) at least two (2) settlements of the kind described in I.I.C.6.

C. TASK AND EXPERIENCE REQUIREMENTS.

An applicant must have been a principal counsel of record in the following proceedings:

1. Five (5) qualifying trials, of which not less than three (3) have been jury trials, during the ten (10) year period preceding the application.

A qualifying trial is a contested civil proceeding in Superior or United States District Court, tried to submission and involving the presentation of live testimony for more than one full day.

2. Twenty-five (25) qualifying trial days which must have occurred within the five (5) qualifying trials, during the ten (10) year period preceding the application.

A qualifying trial day is a full day of hearing which consists primarily of examination of witnesses.

3. Two (2) arbitrations or administrative hearings, each of at least two full days duration, may be substituted for each of the non-jury trials.

4. Ten (10) substantial law and motion matters (which may include post trial motions) during the ten (10) year period preceding the application.

A law and motion matter within the scope of this requirement must include

briefing, argument (if any), submission and decision.

Appeals (including writ proceedings) may be included as law and motion matters if the applicant had substantial involvement in the appeal. Briefing and oral argument at each level of appeal may together serve as one law and motion matter.

A brief description of each matter shall be stated in the application. The Advisory Commission may require submission of the motion papers to evaluate their substantiality.

5. Fifteen (15) depositions of adverse parties or major witnesses not on the applicant's side, during the five year period preceding the application.
6. Five (5) settlements during the ten year period preceding the application, in matters which would meet the jurisdictional limits if filed in the United States District Court or Superior Court.

D. SPECIAL EDUCATIONAL EXPERIENCE.

1. Educational Experience for Certification.

a. An applicant must show that within the five (5) years immediately preceding the application he or she has attended and/or instructed and completed educational programs approved by the Board for specialists in civil litigation, as stated below.

(1) An applicant for certification shall complete at least thirty-six (36) units of approved educational programs, eighteen (18) of which shall be in the areas of trial and pre-trial practice and six (6) of which shall be in the area of damages and similar matters.

(2) A unit is defined as fifty (50) minutes of attendance at an educational program approved by the board.

b. Substantial Equivalent.

(1) An instructor in an approved educational

program shall receive credit under Section II.D.a.(1) and/or II.D.a.(2) at the rate of six (6) hours for every hour of teaching of a program for the first time and two (2) hours for each subsequent hour of teaching the same program.

- (2) One-half (½) of the educational requirements for certification may be satisfied by listening to a complete audio reproduction or viewing and listening to a complete audio video reproduction of an approved educational program, and submission of an affidavit or declaration certifying thereto. Such tapes must have been approved for educational credit and listened to or viewed within the time period for which they were approved.

E. INDEPENDENT INQUIRY AND REVIEW.

1. After the applicant has satisfied all other requirements established for certification, but prior to certification, the Advisory Commission shall cause an independent inquiry and review of the applicant to be made. The independent inquiry and review shall be conducted by the Advisory Commission or by one or more Independent Inquiry and Review Committees of certified specialists which may be appointed from time to time and which shall report to the Advisory Commission. Upon completion of Independent Inquiry and Review, the Advisory Commission shall recommend certification or denial of certification to the Board.

2. The inquiry and review shall consider information furnished by references and any other information relevant to demonstrate the applicant is proficient in civil litigation and has a reputation as an ethical practitioner.

a. Such information may include, but is not limited to, the applicant's work product, problem analysis, and statement of issues and analysis.

b. If the Advisory Commission (or an Independent Inquiry and Review Committee) desires further information, it may require the applicant to appear for an oral interview.

3. References.

Each applicant shall be required to submit the names of ten (10) references who have had an opportunity to observe the work of the applicant. Each reference shall be asked to submit names of two (2) additional references familiar with the applicant's competence. References shall include judges before whom the applicant has appeared and opposing counsel. The references shall not include any attorney who is a relative, or currently a member of the firm, partner or associate of the applicant.

a. The Advisory Commission shall seek additional references from other persons familiar with the work of the applicant.

b. After all requirements other than independent inquiry and review have been met, the names of those seeking to qualify shall be published in *California Lawyer* and within thirty (30) days of such publication, any person may comment upon the applicant's qualifications. Such comments shall be considered as part of the independent inquiry and review process.

c. References shall be requested to provide information on the applicant on forms provided by the Advisory Commission.

d. All references, communications, reference forms, and information gathered pertaining to the applicant shall be confidential.

e. An application shall not be acted upon until replies from eight (8) references have been received.

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F. WRITTEN EXAMINATION FOR CERTIFICATION.

An applicant must pass a written examination in the fields of civil litigation and professional ethics.

G. ALTERNATE TO WRITTEN EXAMINATION.

1. In lieu of such an examination, an applicant may demonstrate the requisite knowledge by fulfilling the requirements of subparagraphs a. and b. or c.

a. Completion, at any time, of fifty (50) qualifying trials as defined in Section II.C.1., and

b. Being principal author of three (3) articles, books or digests which, in the Commission's opinion, constitute a substantial and scholarly contribution to the advancement of the practice of civil litigation law; or

c. Instruction of fifteen (15) units in courses approved by the Advisory Commission. In order to evaluate the materials taught, the Advisory Commission may request an outline of the materials, or if available, a taped reproduction.

2. The Advisory Commission may review the documents required by this section to determine whether they demonstrate the requisite knowledge of civil litigation.

III. STANDARDS FOR RECERTIFICATION.

An applicant for recertification must satisfy the requirements of Sections III.A, B and C.

A. REQUIRED PERIOD OF LAW PRACTICE.

An applicant shall at the time of recertification be an active member, in good standing, of the State Bar of California and shall have engaged in the practice of law for a period of four (4) of the five (5) years immediately prior to the date on which the certificate of specialization is due to expire.

Practice of law means rendering legal advice and representing clients in legal matters. The practice of law must occupy a significant portion of an applicant's occupational endeavor(s) and the time devoted thereto

shall be sufficient to demonstrate substantial involvement in the practice of law.

B. TASK AND EXPERIENCE REQUIREMENT.

An applicant for recertification must show that during the current certification period, he or she has either:

1. Served as a principal counsel of record during twenty (20) qualifying trial days as defined in Section II.C.2.; or
2. Completed three (3) qualifying trials as defined in Section II.C.1.

C. SPECIAL EDUCATIONAL EXPERIENCE OR WRITTEN EXAMINATION.

1. Educational Experience for Recertification.

a. Units required for Recertification. An applicant for recertification shall, within the current five (5) year certification term, attend or instruct not less than forty-five (45) units of educational programs approved by the Board for civil litigation specialists, or in the alternative, shall comply with subsection III.C.3. The education completed after submission of the application for recertification may be credited to the current or subsequent certification term, but not both.

b. An instructor in an approved program shall receive credit under Section III.C.1.a. at the rate of six (6) hours for every hour of teaching of a program for the first time and two (2) hours for each subsequent hour of teaching the same program.

2. Limitations and Aggregation of Educational Units for Recertification

a. A specialist shall not receive credit for more than twenty (20) units of educational experience in any calendar year.

b. Up to one-half (1/2) of the educational requirements for recertification under Section III.C.1.a. may be satisfied by listening to a complete audio reproduction, or by viewing and lis-

tening to a complete audio-video reproduction of an approved educational program of study and submission of an affidavit or declaration certifying thereto. Such tapes must have been approved for educational credit, and listened to or viewed within the time period for which they were approved.

c. Up to one-half of the educational requirement credits for recertification under Section III.C.1.a. may be satisfied by sponsoring the candidacy of an applicant for certification. The number of units credited for liaisonship shall be determined by the Advisory Commission.

3. Written Examination for Recertification

In lieu of satisfying the educational requirements of Section III.C.1.a., an applicant may recertify by successfully passing a written examination in the fields of civil litigation and professional ethics.

D. INDEPENDENT INQUIRY AND REVIEW.

After a specialist has satisfied all the other requirements established for recertification but prior to recertification the Advisory Commission shall conduct an independent inquiry and review of the applicant. Upon completion of independent inquiry and review, the Advisory Commission shall recommend recertification or denial of recertification to the Board.

The process of independent inquiry and review for recertification must comply with Section II.E. of these Standards. ■

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