



July 29, 2007

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RE: State Admiralty Certifications Initiatives

Dear Forrest:

Earlier this month President Liz Burrell graciously contemplated that I might be able to add some measure of assistance to you in the State Certification matter that has arisen in California. With her usual grace it appears to me that she somehow contemplates that an old Florida mule can somehow hold his own while trying to keep up with you and your Committee of thoroughbreds.

In order to give a background of the Florida plan, I provide the following information that may or may not be helpful.

Basically, the current Florida admiralty certification plan has not been a success from enrollment of persons or "prestige". It may be barely cost effective to the Bar.

I have once again reviewed Gray Staring's article, have reviewed Liz's article, the MLA transcript of many years ago and all of the other documents submitted to me. Since I was a member of the then Executive Committee in 1978 to 1981, I recall the discussions that surrounded this issue pending at that time before the ABA. Gray Staring, Ken Volk, Herbert Lord, John Sims and Gordon Paulsen were all involved and the Executive Committee worked hard on this. Additionally, when I was First Vice-President of MLA from 1994 to 1996 the Florida Bar entered the admiralty certification area and I worked on the Florida Bar project expressing the MLA position. At that time, MLA felt that it did not have the financial resources nor demand by its members to be a national certifying entity such as N.I.T.A is for trial certification. I would expect the same is true today.

As to the Florida Bar initiative, I believe that November of 1994 and May of 1995 were the main areas of our communication. Unfortunately the

correspondence and written activity have probably long disappeared from our office; however, I will run another check in our closed file area. I do recall writing a position paper that was either adopted by the MLA Board of Directors or in the interim approved by the officers asking that the Florida Bar not consider admiralty as a State specialty because of the historical significance of ABA position. When that appeared to fail, MLA then ask for additional time to present additional information. My recollection is that our first request for additional time was granted but the second request was denied.

The admiralty specialty was a “three wave concept” of State certification.

In Florida the “first wave” was a “designation” system. The designation system was basically that you could designate up to three areas of practice, prepare a form that generally showed your experience and length of practice and then submit this form to the Designation Committee. The Designation Committee consisted of about a dozen persons. According to my recollection, most Designation Committee members, if not all, had been rather lengthy members of the American College of Trial lawyers. My recollection is this was in the late seventies or early eighties. I was a member of that Committee for the Florida Bar. Some practitioners were “admiralty designated” and some did not designate. Most admiralty practitioners did not designate. In fact, I cannot recall many MLA members who did. This system was not a success and the designation was abandoned.

The “second wave” was a few specialties (not admiralty) in the eighties. I believe the Civil Trial Certification and the Criminal Law Certification were among the first in 1983. Once again, to test this, the American College of Trial Lawyers’ Fellows in Florida was called upon. I was one of the examiners and question writers, but had to withdraw because of a series of trials around the same time as the grading activity. However, the system of certified civil trials has worked reasonably well because procedure and rules of evidence are very testable. I don’t believe that any Fellows were grandfathered into the system.

In the mid nineties, the Florida Bar began multiple designations. There were rumbles around the country about having an “admiralty specialty”. In Florida the rumbles principally arose from the personal injury plaintiff’s bar, but not exclusively. Coupled with this was this was the advertising initiatives that were taking place. These apparently went hand-in-hand.

There are now twenty two areas of certification:

- Admiralty and maritime
- Appellate Law
- Aviation Law

- Civil Trial Law
- Elder Law
- Immigration and Nationality
- Intellectual Property
- International Law
- Labor and Employment Law
- Marital and Family Law
- Tax Law
- Antitrust and Trade Regulation
- Business Litigation
- City, County and Local Government Law
- Construction Law
- Criminal Appellate
- Criminal Trial
- Health Law
- Real Estate
- State and Federal Government and Administrative Practice
- Wills, Trusts and Estates
- Workers' Compensation

Most were created in the late eighties and nineties. Only two have been created since 2000.

In any event, the Florida Bar set up the procedure for certification of admiralty. About a dozen persons volunteered to be the Selection Committee and they were automatically grandfathered in. Most of the persons who had a substantial admiralty practice were MLA members who felt that it was inappropriate to become certified considering their longtime involvement with MLA. So they did not participate. However, since the Florida Bar had moved from the designation process to the certification process it was felt that maybe, just maybe, the next move by the Florida Bar would be some sort of mandatory effort so that if you were not certified you would not be able to practice in that area. In that regard most firms had their young lawyers take the certification and they were successful. Since that time, each of these lawyers have had to take additional CLE other than the mandatory CLE.

Since the certification process has begun, I have kept tabs of the number of admiralty certified lawyers. Since the initial test and certification in 1996 some of those certified have dropped out, passed away or other personal changes. The Florida Bar consists of over 80,000 lawyers of which approximately 10,000 are practicing out of Florida and another 5,000 or so are in government services. In 1996 thirty-one lawyers passed the exam and there were approximately a dozen who were administering the test or approximately forty-three persons total who were certified. In 1997 two certified. In 1998

Forrest Booth, Esquire
July 29, 2007
Page 4

none certified. In 1999 one certified. In the year 2000 eight certified. In 2001 one certified. In 2002 two certified. In 2003 two certified. In 2004 none certified. In 2005 two certified. In 2006 two certified. In 2006 there was currently fifty-five persons practicing in the state who are certified and one practicing in the Virgin Islands who is a member of the Florida Bar. Of these thirty-three have been a member by either examination or administering the test in 1996.

On balance, since the beginning of the program there has only been a net gain of about twelve and only eight in the last five years. The only certification groups that appear to be smaller would be the Anti-Trust and Trade Regulation, Aviation, Immigration and Nationality Law, and International Law. The balance of the twenty-two certifications areas are extensively larger by tremendous amount than admiralty.

In summary, the Florida experiment has resulted in persons becoming disenchanted with the fact that this did not bring them new clients, new "fans" and only have required additional CLE attendance. The Florida Bar must be generally unhappy since the large number of certification in other areas makes it more of a money maker or at least pay as you go. In the Florida Bar Journal of June 2007, Committees of the Bar report: Neither the Admiralty Law Committee nor the Admiralty Certification Committee submitted a report or published a report.

If I may be of help please let me know.

Best regards.

Sincerely,


James F. Moseley

JFM/bt

Cc: Lizabeth L. Burrell, Esquire
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