

PROPOSED VOLUNTARY SPECIALTY CERTIFICATION PROGRAM

Issue

Should the State Bar of Michigan create a lawyer specialty certification program to develop high-quality, cost-effective ways for members voluntarily to acquire, maintain, and demonstrate specialty practice competence?

RESOLVED, that the State Bar of Michigan, within the tradition of voluntary continuing legal education, create a specialty certification program and a Standing Committee on Specialty Certification to support specialty practice in the 21st century.

Synopsis

The proposal asks the Representative Assembly to endorse the framework for a specialty certification program. If rule changes became desirable or necessary to develop the program, those changes would be the subject of Representative Assembly review.

The proposal has three simple goals:

- 1) To help new lawyers acquire specialty skills and recognition in the legal market
- 2) To help veteran lawyers identify quality programs to maintain competence in their legal specialties, or to develop their practices into new areas
- 3) To provide the public with credible guidance about legal specialties in the face of a proliferation of confusing information about legal services, specialization, and qualifications

As recommended by the State Bar of Michigan 21st Century Practice Task Force, the proposed specialty certification program rests on four pillars: 1) that participation be voluntary, i.e., members should be able to promote their services to the public in specialty practice areas without certification in that area; 2) that identifying skills and competencies important to a successful practice and helping members acquire and maintain them cost-effectively is an important responsibility of the State Bar; and 3) that State Bar sections have an indispensable role in promoting quality specialized practice. To that end, the proposed Standing Committee on Specialty Certification, working closely with State Bar sections and the Institute of Continuing Legal Education (ICLE), would develop specialty certification guiding principles, create and monitor standards, and endorse programs consistent with those standards. Endorsed specialty certification programs could be offered through a variety of vendors, such as sections themselves, local bar associations, ICLE, and commercial CLE providers. Members could advertise their specialty certification to the public.

Background

The proposal is derived from the work of the State Bar of Michigan 21st Century Practice Task Force, which recognized the increasing importance of specialization in the legal marketplace, the need to help members acquire, maintain, and market specialty competence, and the growing potential for consumer confusion. The proposal builds on the experience of the Institute of Continuing Education in developing two successful specialty certificate programs in conjunction with State Bar of Michigan sections – the Probate and Estate Law Certificate Program and the Family Law Certificate Program.

Opposition

Opponents of specialty certification historically have raised two objections to specialty certification programs. First, they worry that specialty certification might impose an additional and unnecessary burden on lawyers who by qualifying for admittance to the bar have already demonstrated their fitness to practice all areas of law. Opponents have also feared that specialty standards, even if desirable in theory, could become captive to commercial or to special interests within the profession, to the detriment of “outsider” specialists whose views of practice specialty are not in accordance.

The proposal’s proponents recognized the seriousness of those concerns. The State Bar of Michigan has a long history of debating this issue, as reflected in the list of prior actions by the Representative Assembly (below). Pointing to that history, the proponents point to two long-standing traditions of the Michigan bar strongly suggest that specialty certification in Michigan will develop in a way that benefits but does not burden members. First, in contrast to most other states, Michigan has a long and well-established history of robust voluntary involvement in high quality continuing legal education. They expect that history to drive the development of the program: consistent with that history, a well-established practitioner may not have the need or desire for certification and should not be required to obtain certification. On the other hand, a brand new member does not have the experience by which to demonstrate competency in a specialty area; the program would offer that member a path to credibly demonstrate competence. Second, the State Bar of Michigan and its members have long recognized the wisdom of the adage “one size does not fit all.” The new Standing Committee on Specialty Certification would be designed to operate according to that principle. Competency can be acquired and demonstrated in different ways in different types of practices. The answer to what constitutes competence and how to demonstrate it would be developed separately for each type of practice under the guidance of State Bar sections.

Prior Action by Representative Assembly

During its meeting on September 18-19, 1975, the Representative Assembly took the following action: “Adopted in principle the concept of specialization and asked the Committee on Specialization in Legal Practice to report back with a proposal revised to provide for a stronger specialization structure. Also referred to the Specialization Committee for incorporation into its plan was a proposal from the Special Committee on Trial Advocacy Certification to create a formal specialty in that field.”

During its meeting on September 16, 1976, the Representative Assembly took the following action: “Approved the recommendation of the State Bar Committee on Continuing Legal Education that continuing legal education not be made mandatory for Michigan lawyers at this time; that the State Bar of Michigan renew its commitment to active and wide-ranging voluntary programs of continuing legal education; that the State Bar of Michigan continue to review specialization, certification and advertising and their effect upon the need for mandatory legal education.”

During its meeting on April 2, 1977, the Representative Assembly took the following action: “Approved the report and recommendations of the Committee on Certification and Specialization proposing that the Code of Professional Responsibility be amended to provide for a system of self-designation in fields of practice for Michigan lawyers.”

During its meeting on May 9, 1981, the Representative Assembly took the following action: “Adopted a proposal to instruct the State Bar Committee on Advertising, Certification and Specialization to

continue to develop a certification plan for consideration by the Representative Assembly, such plan to include provisions addressing the effect, if any, of certification on the right of those who are and are not certified to advertise and to practice in that field.”

During its meeting on January 9, 1982, the Representative Assembly took the following action: “Defeated the proposed plan for certification in the field of (Family Law) drafted by the State Bar Standing Committee on Advertising, Certification and Specialization.”

During its meeting on September 18, 1986, the Representative Assembly took the following action: “Defeated a proposed plan for Certification in the Field of (Family Law).”

During its meeting on April 4, 1987, the Representative Assembly took the following action: “Approved a proposal to recommend to the Michigan Supreme Court the adoption of a proposal for mandatory continuing legal education.”

During its meeting on April 23, 1994, the Representative Assembly took the following action:

- (1) “Referred a proposal for the adoption of a certification program or state accreditation program for specialties in the law for the State of Michigan to the Assembly Hearing Committee to be reconsidered by the Representative Assembly at its September 22, 1994 meeting.”
- (2) “Withdrew a proposal to authorize a state sponsored certification program of specialists in family law for the State of Michigan.”

During its meeting on September 22, 1994, the Representative Assembly took the following action: “Adopted a proposal for the President of the State Bar to appoint a committee to address issues of lawyer advertising and lawyer specialty certification, including any existing or alternative enforcement mechanisms, as well as the relationship, if any, between concerns about lawyer competency and mandatory continuing legal education.”

During its meeting on April 22, 1995, the Representative Assembly took the following action: “Approved the proposed amendment to the Supreme Court Rules Concerning the State Bar of Michigan to establish a plan of legal certification.”

Fiscal and Staff Impact on the State Bar of Michigan

Although the fiscal and staff impact of a State Bar voluntary specialty certification program is indeterminate, the cost of a *voluntary* specialty certification program is significantly less than a mandatory one. At the outset it is anticipated that (1) no additional staff will be necessary to assist the Standing Committee on Specialty Certification; (2) the cost of developing and operating approved programs will be borne by third party vendors; and (3) those costs will be covered by user fees (paid by the lawyers enrolled in the programs).

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on September 22, 2016

Should the State Bar of Michigan create a specialty certification program and a Standing Committee on Specialty Certification to support specialty practice in the 21st century?

The above Resolution should be adopted.

(a) Yes

or

(b) No