



# Program for the CERTIFICATION of Elder Law Attorneys

The Board of Certification of the National Elder Law Foundation (NELF) has issued its Rules and Regulations regarding certification of elder law attorneys. This report, written by Helen Cohn Needham, first Chair of the NELF Board of Certification, presents a brief history and overview of certification as well as the complete text of the NELF Board of Certification Rules and Regulations regarding certification of elder law attorneys.

## What Is The National Elder Law Foundation And The Board Of Certification?

NELF was founded by the Board of Directors of The National Academy of Elder Law Attorneys (NAELA) in 1993. It is a non-profit organization, dedicated to the development and improvement of the professional competence of lawyers in the area of elder law, and which is working to have the specialty recognized by judicial authorities and the organized bar in the United States. NELF created the Board of Certification to implement and administer a system to certify elder law attorneys. The board of certification (board) and its committees are made up of persons working in the elder law field as private attorneys, in the public sector, and as professors teaching elder law and related fields in law schools. Not all of its members are attorneys, and not all of its members are members of NAELA. The American Bar Association's House of Delegates approved the National Elder Law Foundation as the certifying entity for specialization in elder law in February 1995.

## What Is Certification?

The purpose of the certification program is to identify those lawyers who have the enhanced knowledge, skills, experience, and proficiency to be properly identified to the public as certified elder law attorneys. If all of the requirements of the board are satisfied, the attorney may announce that the attorney is "Certified as an Elder Law Attorney by the National Elder Law Foundation."

## Why Certification?

Certification makes all of us nervous. We are all concerned about its cost to us and its impact on our practice if we are not yet able to satisfy the minimum requirements necessary to apply for certification. And - let's face it - we are all scared silly about taking the exam. So why create a certification program?

Whether we individually like it or not, certification of specialties within the legal profession has begun, and will only gain momentum. This has occurred as the state bars and the public have become increasingly concerned about the existing and increasing practice of attorney self-designation of specialty (including in advertisements) a designation not buttressed by any objective proof of knowledge and experience in the claimed specialty. We certainly have seen this happening in elder law as more and more persons call

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themselves elder law attorneys, often despite the attorney's lack of training or experience in the field.

Initially the movement toward certification took the form of state bar association certification programs. Several states have such programs in a number of specialties' such as estates and trusts, and family law.

Next came the development of certification programs by private certification organizations, such as the National Board of Trial Advocacy, the Bankruptcy Board of Certification and the Commercial Law League. This required some states, and subsequently the American Bar Association (ABA), to develop programs to accredit private organizations as certifiers. Several states have already decided to "piggy back" on ABA certification. An additional group of states have developed their own programs for accrediting private organizations. Quite clearly this is an issue, which will not go away.

The issue was not would there be private certifiers, but rather who would be the private certifiers. As we had already seen in the CLE field, there had been a blossoming of private organizations offering elder law training of varying quality. While apparently no such organization had yet arisen in the certification field, there was no reason not to assume that the same thing would occur with respect to certification.

As the contents of NAELA's annual symposia and institutes demonstrate, there is a parallel need to train new practitioners and increase the knowledge and skills of more experienced persons. Studies had already shown that certification resulted in attorneys seeking increased training. Thus, certification further increased an attorney's knowledge and skills even before the attorney becomes certified.

For all these reasons, NAELA awarded the National Elder Law Foundation and its Board of Certification seed money to begin a totally voluntary certification program open to all attorneys.

## How Is Elder Law Defined For Purposes Of The Board's Certification Program?

Section 2 of the Rules and Regulations of the Board of Certification defines elder law for purposes of certification by NELF.

### Section 2 Definitions

- 2.1 "Elder Law" is the legal practice of counseling and representing older persons and their representatives about the legal aspects of health and long term care planning, public benefits, special needs counseling, surrogate decision-making, older persons' legal capacity, the conservation, disposition and administration of older persons' estates and the implementation of their decisions concerning such matters, giving due consideration to the applicable tax consequences of the action, or the need for more sophisticated tax expertise.
- 2.2 In addition, attorneys certified in elder law must be capable of recognizing issues of concern that arise during counseling and representation of older persons, or their representatives, with respect to abuse, neglect, or exploitation of the older person, insurance, housing, long term care, employment, and retirement. The certified elder law attorney must also be familiar with professional and non-legal resources and services publicly and privately available to meet the needs of the older persons, and be capable of recognizing the professional conduct and ethical issues that arise during representation. All the experience, task, and examination requirements relate to these areas of law.

This definition of elder law is the result of a lengthy process, which began in 1988. It involved those who formed NAELA, NAELA board members during the years 1988 through 1993, the Fellows of NAELA, the membership of NAELA, the members of the board of certification, and the ABA Standing

Committee on Specialization. NAELA and its members have been involved at every step in the process of defining this new and growing specialty.

## Who Sets The Standards For Certification?

The minimum standards for certification are set out in Section 5 of the Rules and Regulations adopted by the board of certification. The standards were adopted after much debate by NAELA's Board, NAELA's members and the board of certification itself. However, to some extent the board was limited in how it could set those requirements

In order for certification to be useful to an attorney the certification process must be approved by the ABA and the state bars. Thus the board of certification's Rules and Regulations must at least satisfy the minimum requirements that would have to be met in order to receive approval as an accrediting organization from the ABA and various state organizations. Under ABA requirements, a certification applicant must have been in practice for at least five years and must have been substantially involved in the specialty area during the three-year period immediately preceding the date of their short form application to the certifying organization. Substantial involvement, as defined by the ABA, is measured by the type and number of cases or matters handled and the amount of time spent practicing in the specialty area. Also required are a minimum of five favorable references from attorneys, a majority of whom are attorneys who practice in one or more areas constituting elder law, a written examination, and a minimum of 45 hours of participation in continuing legal education in the specialty area within the three-year period preceding the lawyer's short form application.

## Who May Become Certified?

Certification is open to all who qualify, without regard to age, race, religion, color, ethnic background, gender, sexual orientation, or physical ability and without regard to membership in NAELA. Once certification is granted, it is effective for five years. Re-certification is not automatic, and

requires satisfaction of criteria similar to that necessary for initial certification.

## What Are The Criteria For Certification?

The following briefly describes the minimum standards, which must be met to become certified. These standards are more fully specified in Section 5 of the Rules and Regulations.

- 1. Licensure.** You must be licensed to practice law in at least one state or the District of Columbia.
- 2. Practice.** You must have practiced law during the five-years preceding your short form application and must still be practicing law. If you were a full-time probate judge or a full-time professor at an accredited law school, the standards committee of the board may credit such time toward this requirement.
- 3. Integrity and Good Standing.** You must be either a member in good standing of the bars in all places in which you are licensed or have been a member in good standing at the time any license was voluntarily surrendered.
- 4. Substantial Involvement/ Experience.** You must have spent an average of at least 16 hours per week, practicing elder law as defined by Section 2 of the Rules and Regulations during each of the three-years immediately preceding your short form application. In addition, you must have handled at least 60 elder law matters during those three-years, with a specified distribution among subjects as described in Section 5.1.4.2 of the Rules and Regulations.
- 5. Continuing Legal Education.** You must have participated in at least 45 hours of continuing legal education in elder law during the preceding three-years.
- 6. Peer Review/Professional References.** You must submit the names of five references from attorneys familiar with your competence and qualifications in elder law. These persons must themselves satisfy specified

criteria. They will be contacted directly by the board of certification, and each person's response will be confidential and unavailable to you.

- 7. Examination.** You must sit for the certification examination within two-years of filing your short form application.

## How Do I Start The Application Process?

Request the board to send you the initial short form application package. You can do this by emailing your request to the board of certification at [info@nelf.org](mailto:info@nelf.org), or by writing to the board of certification at 6336 N. Oracle Rd., Ste. 326, #136, Tucson, AZ, 85704. The packet contains an explanation of the certification program, a copy of the Rules and Regulations, and a short form application. This short form application allows the board to determine whether or not you meet the initial requirements. If so, you will be sent the long form application, including the notice to take the examination, which must be submitted at least 30 days before taking the examination. The entire application process, including the examination, must be completed within two-years after filing your initial short form application. The exam may be taken before or after filing the long form application.

## What Will Certification Cost?

Short Form Application Fee.....	\$ 25.00
Long Form Application Fee.....	\$275.00
Examination Fee Using Your Laptop and the ExamSoft Program .....	\$450.00
Completing the Exam Manually .....	\$600.00
Payable 30 days prior to the examination	
Annual Fee .....	\$300.00
Late Fee .....	\$ 25.00

All fees are non-refundable.  
All fees are subject to change without notice.

The board has set the fees at an amount intended to make the

certification process self-sufficient. Certification costs money. The board has paid staff to establish and administer the system and to act as liaison with NELF, the American Bar Association's Committee on Specialization, and the various state bars. While those on the board of certification and its committees have volunteered their time, there will be costs associated with their meetings. Fees must be paid to the ABA and various state bars for the NELF and its board of certification to be accredited, and annual fees are required to continue the accreditation. Those fees are high. For example, it will cost \$3,500 to be accredited for five years by the ABA. Many states will not simply accept ABA's designation, thus requiring additional applications for accreditation, with accompanying fees, to the appropriate organizations.

## Do I Have To Know Everything About Elder Law?

Designing a system to identify elder law practitioners with a demonstrated enhanced level of skill and knowledge is a challenge. When a client goes to a certified elder law attorney's office, the client has the right to expect that the attorney will be able to identify all of the client's needs and either take care of those needs, or notify the client of the problem and refer the client to someone else who can. Thus Section 5.1.4.2 of our certification regulations presents a formidable listing of areas of law in which the certified elder law practitioner is expected to have knowledge and experience so as to be able to meet the client's expectations. However this section does not mandate that the practitioner must have the in-depth knowledge to personally meet each of those needs. Rather it is expected that the elder law attorney will have in-depth knowledge of the "core" areas, identified in Sections 5.1.4.2 (A) (1) through (5) and at least a working knowledge of Sections (6) through (12). In addition, a certified elder law attorney must have an understanding of the ethical issues involved in this specialty and of the aging network in which the attorney must interact.



# RULES and REGULATIONS

## Regarding the Certification of Elder Law Attorneys

### Section I

#### General Principles

- 1.1 The National Elder Law Foundation Board of Certification is dedicated to the development and improvement of the professional competence of lawyers in the area of elder law. In furtherance of that goal, the purpose of the certification procedure is to identify those lawyers who practice in this area, and who have the special knowledge, skills, experience and proficiency to be properly identified to the public as certified elder law attorneys.
- 1.2 Certification is individual and voluntary.
- 1.3 Certification shall not in any way limit the right of a certified elder law attorney to practice law in all fields.
- 1.4 No lawyer shall be required to obtain a certificate as an elder law attorney before practicing elder law.
- 1.5 Certification is open to all who qualify. Application with the appropriate fee shall be made to the board of certification of the National Elder Law Foundation (hereafter referred to as the board of certification) on the forms it shall supply.
- 1.6 Certification is open to all qualified applicants without regard to age, race, religion, color, ethnic background, gender, sexual orientation, or physical ability.
- 1.7 All applications and other information submitted to the board of certification as part of this certification process shall be privileged and confidential, except that the board, as may be authorized by its rules, may reveal that an application has been made for the purposes of (a) verifying information submitted by the applicant or (b) making inquiries with respect to the character and professional reputation of the applicant.

### Section 2

#### Definitions

- 2.1 “**Elder Law**” is the legal practice of counseling and representing older persons and their representatives about the legal aspects of health and long term care planning, public benefits, surrogate decision making, older persons’ legal capacity, the conservation, disposition and administration of older persons’ estates and the implementation of their decisions concerning such matters, giving due consideration to the applicable tax consequences of the action, or the need for more sophisticated tax expertise.
- 2.2 In addition, attorneys certified in elder law must be capable of recognizing issues of concern that arise during counseling and representation of older persons, or their representatives, with respect to abuse neglect, or exploitation of the older person, insurance, housing, long term care, employment, and retirement. The certified elder law attorney must also be familiar with professional and non-legal resources and services publicly and privately available to meet the needs of the older persons, and be capable of recognizing the professional conduct and ethical issues that arise during representation.

## Section 3

### Administration

The certification system shall be administered by the board of certification and its standards, examination and information committees. A majority of the members on the board of certification, standards committee, examination committee and information committee shall be lawyers who have substantial involvement in elder law.

- 3.1 **Board of Certification.** The chair and members of the board of certification shall be appointed by the Board of Directors of the National Elder Law Foundation in such numbers as the board of directors deems appropriate. The chair of the board of certification, with approval of the board, shall be responsible for appointing the chairs and members of the standards committee, the examination committee, grading committee, appeals committee and the information committee, and shall supervise their work. The board of certification shall certify all attorneys in elder law in accordance with these Rules and Regulations.
- 3.2 **Standards Committee.** The standards committee shall be composed of a chair and such members as the chair of the board of certification shall appoint. It shall (1) review and approve the format of all application and reference forms used by the board of certification; (2) determine whether particular applicants have met the standards for certification; (3) approve continuing legal education courses; (4) grant waivers or modifications of specific certification requirements for good cause shown; and (5) decide all requests for reconsideration of denials, revocations, or suspensions of certifications, except reconsideration requests relating to the certification examination.
- 3.3 **Examination Committee.** The examination committee shall be composed of a chair and such members as the chair of the board of certification shall appoint. The examination committee shall prepare the answers to the examination questions to be used by the examination graders. Prior to the administration of the certification examination, the chair of the examination committee shall review and approve all examination questions prepared by the examination committee.
- 3.4 **Information Committee.** The information committee shall be composed of a chair and such members as the chair of the board of certification shall appoint. The committee (1) shall develop written information materials, which may be used by persons considering certification, and (2) may offer workshops, which may be taken by persons considering certification.
- 3.5 **Meetings.** The standards committee, the examination committee, grading committee, appeals committee and the information committee may meet in person or by any means of communication through which all members participating may communicate with each other during the meeting. Meetings shall be held upon reasonable notice to all committee members. A majority of the members of the committee shall constitute the quorum necessary for the transaction of business.
- 3.6 **Term of Service.** The chair and members of the standards committee, the examination committee and the information committee shall serve at the pleasure of the chair of the board of certification and may be removed and replaced as provided in the bylaws of the National Elder Law Foundation.

## Section 4

### Application Procedures

- 4.1 **Application Forms.** Application for certification shall be made in writing on such forms as the standards committee may approve. The standards committee shall develop both a short form and a long form application, both of which shall be completed by the applicant. The standards committee may require the applicant to submit information in addition to that called for on the short form and/or long form application forms.
- 4.2 **Fees.** The short form and long form application fees, annual fee, and examination fee shall be set by the board of certification and may be changed prospectively at any time.
- 4.2.1 **Short Form Application Fee.** Each applicant shall submit a non-refundable short form application fee along with the completed short form application. No short form application will be processed until the application fee has been paid. If the applicant indicates a meeting of the minimum standards for certification, the short form application shall be accepted. If the short form application is not fully complete and the fee paid, the short form application shall be rejected.

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- 4.2.2 **Long Form Application and Fee.** Each applicant shall submit a non-refundable long form application fee along with the completed long form application. No long form application will be accepted and filed unless it is fully completed and until the full long form application fee has been paid.
- 4.2.3 **Examination Fee.** Each applicant shall pay a non-refundable examination fee before taking the certification examination. The fee shall be submitted with the completed examination registration form to the board of certification at least thirty (30) days before the date on which the applicant wishes to take the certification examination. In the event that the applicant does not pass the certification examination, the applicant may retake the exam for the regular examination fee. In addition to the re-examination fee, the applicant shall submit a new examination registration form for each examination date. If the applicant does not pass the examination by the second anniversary of the date on which the short form application was accepted, the application for certification shall be denied. If an applicant whose application is so denied subsequently seeks to become certified, the application process must start again.
- 4.2.4 **Annual Fee.** An annual fee, to be paid by the certified attorney, shall be established by the board of certification to defray the expenses of administering the certification program.
- 4.3 **Procedures**
- 4.3.1 **Short Form Application.** Upon receipt of a completed short form application, the staff of the board of certification shall review the application to determine (1) that the short form application has been completed, (2) that the applicant indicates a meeting of the minimum standards, and (3) that the appropriate application fee has been paid. If so, the short form application shall be accepted.
- 4.3.2 **Long Form Application.** Completion of certification process. Within 15 days of acceptance of the short form application, the applicant shall be sent the long form application, the confidential statement of reference forms, and an examination registration form. The applicant shall complete the long form application and shall pass the certification examination by the second anniversary of the date on which the short form application was accepted. The applicant may complete these requirements in any order and may take the certification examination before completing the long form application. If the applicant has not met all the requirements for certification by the second anniversary of the date on which the short form application was accepted, the applicant may re-apply for certification by submitting a new long form application and application fee, but will receive no credit for requirements that were satisfied in connection with the earlier application.
- 4.3.3 **Application for Re-Certification.** The period of certification is five (5) years, and a certificate of certification shall expire five years after the date it is issued. Notice of the need for re-certification will be sent to the applicant not less than 18 months prior to the expiration date. A properly completed application for re-certification shall be received by the board of certification not more than one year, nor less than two months, before the expiration date of the certificate of certification. Applications for re-certification received less than two months before the expiration shall be assessed a late fee. Individuals filing re-certification applications more than one year after their certificate expires shall be denied re-certification. In such case the certification process must begin anew.
- 4.3.4 **Revocation and Suspension Criteria.** The board of certification may suspend or revoke a certification, if:
- a. The certificate was granted contrary to the Rules and Regulations of the board of certification;
  - b. The certificate was granted to an attorney who is not eligible to acquire a certificate or who made any false representation or misstatement of material fact to the board of certification;
  - c. The certificate holder has failed to abide by the Rules and Regulations promulgated by the board of certification to govern the certification program;
  - d. The certificate holder has failed to pay any applicable fee established by the board of certification;
  - e. The certificate holder no longer meets the qualifications established by the board of certification;
  - f. The certificate holder has been disciplined, disbarred, or suspended from practice by any body authorized to impose professional discipline;
  - g. The certificate holder has been convicted of a crime; or
  - h. The certificate holder has admitted malpractice, or a final malpractice judgment has been entered against the certificate holder.

- 4.3.5 Revocation and Suspension Process.** Prior to revocation or suspension of a certificate of certification, the board of certification shall advise the certificate holder of the proposed action, the reasons for the action, and the certificate holder's right to file a written response. Said notice shall be in writing sent by certified mail (return receipt requested) to the certificate holder's last known address on file with the board of certification. The certificate holder's written response shall be received by the board of certification within 30 days after the date of mailing said notice. After the 30-day response period has passed, the standards committee shall meet and decide whether to revoke or suspend the certificate after considering the grounds for revocation or suspension, the certificate holder's response, if any, and any additional information obtained by the committee. The certificate holder shall be advised of the standards committee's decision by written notice mailed within 15 days after the decision has been made.
- 4.3.6 Certificate Holder Reporting Responsibilities.** The certificate holder shall inform the board of certification promptly of any fact or circumstance described in Section 4.3.4. The certificate holder shall provide the board of certification with written notice of any change of address.
- 4.3.7 Re-Application for Certification.** Any applicant denied certification or re-certification, or a certificate holder whose certificate is revoked or suspended, may reapply for certification at any time. The applicant shall file a short form application and pay the appropriate application fee. The applicant shall disclose on the short form application that certification or re-certification has previously been denied, or that the certificate was revoked or suspended, and the reasons for same. The applicant will receive no credit for requirements that were satisfied in connection with the earlier application. However, the applicant's file shall be available to the standards committee, and the applicant may be required to provide additional information relating to the denial, revocation, or suspension.
- 4.3.8 Confidentiality.** By filing an application, the applicant agrees that the reference forms submitted in connection with the application shall remain confidential. Further, the applicant waives the right to review or discover the reference forms and the information contained therein.

## Section 5

### Minimum Standards for Certification

- 5.1 Standards for Initial Certification. To qualify for certification, the applicant shall pay all required fees meet the conditions of Section 4, and meet the following minimum standards:**
- 5.1.1 Licensure.** The applicant shall be licensed to practice law and be an active member of the bar in at least one state, the District of Columbia, the Commonwealth of Puerto Rico, or any U.S. Territory. The applicant shall be a member in good standing of the bars of all jurisdictions in which the applicant is licensed to practice (or have been a member in good standing at the time any license may have been voluntarily surrendered).
- 5.1.2 Practice.** The applicant shall be engaged in the practice of law, and shall have been engaged in the practice of law for the five-year period immediately preceding the filing of the short form application. Service as a full time judge in the United States or as a full time professor of law at an accredited law school in the United States may be substituted at the discretion of the standards committee.
- 5.1.3 Integrity.** The applicant shall disclose to the board of certification on the long form application, and at any time thereafter, any fact or circumstance described in Section 4.3.4. The board of certification shall accept as final the findings of any body authorized to impose professional discipline. The applicant may not be certified for three-years following any public discipline, final criminal conviction, final malpractice judgment, or admission of malpractice as defined in Section 4.3.4, unless the applicant establishes to the standards committee that such factors are not relevant to the applicant's fitness to be certified.
- 5.1.4 Substantial Involvement.**
- 5.1.4.1 Number of Hours.** The applicant shall make a satisfactory showing of experience through substantial involvement in the practice of elder law. Substantial involvement shall mean that in each of the three-years immediately preceding the short form application, the applicant shall have practiced elder law an average of 16 hours per week, including billable and non-billable hours.
- 5.1.4.2 Task Requirements. The applicant shall satisfy the following task requirements:**
- A. During the three-years immediately preceding the short form application, the applicant shall have provided legal services in at least sixty (60) elder law matters in the following categories:

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1. Health and Personal Care Planning, including giving advice regarding, and preparing, advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, individuals with supplemental/special needs, attorneys-in-fact, and families about life care, medical and life-sustaining choices, and related personal life choices.
  2. Pre-Mortem Legal Planning, including giving advice and preparing documents regarding wills, trusts, durable general or financial powers of attorney, real estate, gifting, and the financial and income, estate and gift tax implications of any proposed action.
  3. Fiduciary Representation, including seeking the appointment of, giving advice to, representing, or serving as executor, personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.
  4. Legal Capacity Counseling, including advising how capacity is determined and the level of capacity required for various legal activities, and representing those who are or may be the subject of guardianship/conservatorship proceedings or other protective arrangements.
  5. Public Benefits Advice, including planning for and assisting in obtaining Medicaid, Medicare, Social Security benefits, Supplemental Security Income, Veterans benefits and housing and food programs.
  6. Special Needs Counseling, including the planning, drafting and administration of special/supplemental needs trusts, housing, employment, education and related issues.
  7. Advice on Insurance Matters, including analyzing and explaining the types of insurance available, such as health, life, long term care, home care, COBRA, medigap, long term disability, dread disease, prescription coverage, and burial/funeral policies.
  8. Resident Rights Advocacy, including advising patients and residents of hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.
  9. Housing Counseling, including reviewing the alternatives available and their financing such as: renovation loan programs, life care contracts, home equity conversion, reverse and other mortgage options
  10. Employment and Retirement Advice, including pensions, retiree health benefits, unemployment benefits, and other benefits.
  11. Counseling with regard to age and/or disability discrimination in employment, housing and related areas.
  12. Litigation and Administrative Advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.
- B. Of the 60 elder law matters, 40 must be in categories listed in 5.1.4.2.A. 1 through 5, with at least five matters in each category.
- C. Ten of the elder law matters must be in categories listed in 5.1.4.2.A. 6 through 12, with no more than five in any one category, and
- D. The remaining 10 elder law matters may be in any category listed in 5.1.4.2.A. 1 through 12, and are not subject to the limitation contained in parts B. or C. of this subsection.
- E. As used in this section, an applicant will be considered to have “provided legal services” if the applicant: a) provided advice (written or oral, but if oral, must be supported by substantial documentation in the client’s file) tailored to and based on facts and circumstances specific to a particular client; b) drafted legal documents such as, but not limited to wills, trusts, or health care directives, provided that those legal documents were tailored to and based on facts and circumstances specific to the particular client; c) prepared legal documents and took other steps necessary for the administration of a previously prepared legal directive such as, but not limited to, a will or trust; or d) provided representation to a party in contested litigation or administrative matters concerning an elder law issue,

**5.1.5 Continuing Legal Education.** Within the three-years immediately preceding the short form application, the applicant shall have participated in at least 45 hours of continuing legal education in elder law (as defined by Section 5) which, have been approved by the applicant’s state bar and/or by the standards committee. Up to five

hours of continuing legal education credit may be allowed each year, at the discretion of the standards committee, for teaching courses, speaking at seminars, authoring books or articles and similar activities. Sixty (60) minutes of actual instruction equals one hour of continuing legal education.

**5.1.6 Peer Review.**

**5.1.6.1 Providing the Names of References.** The applicant shall submit as references the names of five attorneys, all of whom are familiar with the competence and qualifications of the applicant in elder law and none of whom are from persons related to or engaged in legal practice with the lawyer. Three of the attorneys named shall have devoted a minimum of 800 hours to the practice of elder law (as defined in Section 2) during each of the three-years immediately preceding the short form application. The names and addresses of the references shall be provided by the applicant on a standardized “Confidential Statement of Reference” form prepared by the board of certification. The board may authorize references from attorneys other than those with 800 hours of elder law practice, as it deems appropriate. The board may also make additional inquiries, as it deems appropriate. The applicant shall sign the confidentiality waiver, waiving the right to review or discover the confidential statements of reference and the information contained therein, and the board of certification shall forward the confidential reference forms to the references.

**5.1.6.2 Use of Information.** The board of certification may deny certification based on information received which establishes, in the opinion of the board, that the applicant does not meet the minimum standards of certification as set forth in these Rules and Regulations.

**5.1.7 Examination.** The applicant shall make a satisfactory showing of competence in elder law by successfully completing a written examination prepared and graded by the examination committee. The examination shall be practical and designed to demonstrate special knowledge, skills, and proficiency in the services that make up elder law, the ethical rules of special concern to elder law attorneys, special knowledge of the aging process, the aging network and its resources and recognition of the need to obtain, or refer the client for, advice on medical, social work and financial matters.

**5.2 Standards for Re-Certification.** The period of certification is five years. A certificate holder who desires continued certification shall apply for re-certification within the time limits prescribed in Section 4.3.3. To be eligible for re-certification, the certificate holder shall pay all required fees and meet the following minimum standards:

**5.2.1 Good Standing.** The applicant shall furnish satisfactory evidence of good standing in all jurisdictions in which a license is held.

**5.2.3 Substantial Involvement.** The applicant for re-certification shall make a satisfactory showing of continued substantial involvement in the practice of elder law since the applicant’s certification or most recent re-certification. Substantial involvement means that during at least three of the four years following the applicant’s certification or most recent re-certification, the applicant has met the requirements of Section 5.1.4, and that the applicant expects to satisfy the number of hours requirement in the fifth year.

**5.2.4 Continuing Legal Education.** The applicant shall, during the period since the applicant’s certification or most recent re-certification, have participated in at least seventy-five (75) hours of continuing legal education in elder law as defined by Section 5, which have been approved by the applicant’s state bar and/or by the standards committee. A minimum of one-half of the required hours must be taken in-person. Sixty (60) minutes of actual instruction equals one hour of continuing legal education. No more than 24 hours of continuing legal education may be credited in any one year to satisfy this requirement. Continuing legal education may be earned to satisfy this requirement until two months prior to the expiration of the certificate. The applicant shall list on the application for re-certification the dates, locations, sponsors, and numbers of credits earned for all continuing legal education courses, which satisfy this requirement. The applicant may request on the application for re-certification credit for up to 20 hours of continuing legal education credit for teaching courses, speaking at seminars, authoring books or articles and similar activities.

**5.2.5 Peer Review.** The applicant for re-certification shall submit the names and addresses of three (3) current board certified elder law attorneys who are familiar with the competence and qualification of the applicant in elder law, along with the signed confidentiality waiver. The board may authorize references from attorneys other than board certified attorneys, as it deems appropriate. The board may also make additional inquires as it deems appropriate.

**5.2.6 Discretion to Request Additional Information.** If, after reviewing the information submitted by the applicant and the responses of the references, the board of certification determines that the applicant may not meet the elder law standards established by these Rules and Regulations, the board of certification may conduct further investigations or require additional information from the applicant or other sources. The board may deny re-certification based on the information it receives.

*(continued on page 10)*

- 5.2.7 **Lapse of Certification.** The failure of a certificate holder to timely apply for re-certification shall result in a lapse of certification at the expiration of the certificate. Applications received less than two months before the expiration date shall be assessed a late fee. Individuals filing re-certification applications more than one year after their certificate expires shall be denied re-certification and must successfully complete the process governing initial application to again be certified.

## Section 6

### Reconsideration And Appeal

- 6.1 **Petitions for Reconsideration.** After written notice has been sent by the board of certification that an application for certification or re-certification has been denied, or a certificate has been revoked or suspended, the applicant may petition the board of certification for reconsideration. Such petition must be received by the board of certification within 30 days of the date that the notice was sent by the board. The petition may be informal, but shall be in writing and adequately identify the determination for which reconsideration is requested, the date of mailing of such determination, the reasons the determination should be altered, and the relief requested.
- 6.2 **Determination Relating to the Certification Examination.** If a petition for reconsideration questions the applicant's performance on the certification, the petition shall be forwarded to the examination committee. The examination committee shall decide whether to grant the requested relief after considering the applicant's petition, the applicant's examination, and any additional information obtained by the committee. The applicant shall be advised of the examination committee's decision by written notice mailed within 15 days after the decision has been made.
- 6.3 **Determinations Relating to the Certification Application or Standards.** If a petition for reconsideration questions an aspect of the certification program other than the applicant's performance on the certification examination, the petition shall be forwarded to the standards committee. The standards committee shall decide whether to grant the requested relief after considering the applicant's petition and any additional information obtained by the committee. The applicant shall be advised of the standards committee's decision by written notice mailed within 15 days after the decision has been made.
- 6.4 **Hearings.** Although there is no right to a hearing on a petition for reconsideration, the appropriate committee may, in its discretion, grant the petitioner an in person or telephone hearing.
- 6.5 **Appeal.** An appellant who fails to achieve a passing score on the exam may appeal in writing to the Executive Director of the NELF Board provided any such request must be made within thirty (30 days) from the date appellant's written notification of a non-passing score is mailed to appellant.

The appellant may review copies of his or her own graded exam and examples of exam answers of those who took the examination with the appellant which are considered to be more appropriate concerning questions for which the appellant may have been scored low.

The appellant may take notes during the review in the presence of the proctor, but shall not have or make copies of the exam or any other materials presented during the review.

Such review shall be at a date, time and in the office of a CELA proctor or other location chosen by the Executive Director to facilitate the convenience of the appellant and shall be held within forty five [45] days after the Executive Director's confirmation of receipt of Appellant's written appeal request. Any such review shall not exceed two hours.

The appellant may also request his or her average scores for each question and the lowest, highest and average scores for each question among those who took the examination with the appellant.

The appellant shall have a right to a hearing before a three person Appeals Committee to be chosen by Executive Director provided appellant has first reviewed his or her exam as provided above and appellant's score is no lower than ten [10] points below the minimum passing grade. The Appeals Committee will be made up of two members of the NELF Board of Directors and one CELA who is not a NELF director or officer. None of the three person Appeals Committee members may have taken part in the grading of the exam being appealed or served on the Appeals Committee of a prior appeal taken by the appellant.

The appellant is permitted to prepare a written response to the Appeals Committee concerning the exam with any comments the appellant may have.

Additionally, the appellant may make an oral presentation to the Appeals Committee not to exceed 30 minutes at a mutually acceptable time and place [which may be telephonically] within thirty (30) business days from the date of the exam review.

The Appeals Committee has authority to overturn any graded results. During its deliberations, the Appeals Committee may review:

- a. all appellant's exam questions and answers;
- b. the answers of those who took the examination with the appellant;
- c. model answers prepared by the exam drafting committee;
- d. the appellant's written response and oral presentation to the Appeals Committee [if any]; and
- e. and any other information or documentation it might find pertinent in determining its findings.

The decision of the Appeals Committee is final.

## Section 7

### Notification Of Certification

- 7.1 **Notification of State Supreme Court.** Upon certification or re-certification, the board of certification shall notify the Supreme Court, or other appropriate authority in each jurisdiction in which the attorney is licensed to actively practice law, of the certification or re-certification and request notice of any future disciplinary action taken against the attorney.

## Section 8

### Disclosure Of Certification

- 8.1 **Written Disclosure.** Except as restricted by applicable law, an attorney holding a current certification from the board of certification shall use the following language to disclose the certification in written communication: "Certified as an Elder Law Attorney by the National Elder Law Foundation."

## Section 9

### Amendments

- 9.1 **Procedure.** These Rules and Regulations may be amended as provided in the bylaws of the National Elder Law Foundation.

<b>Current Certification</b>	<b>Fees</b>
Short Form Application Submittal:.....	\$ 25.00
Long Form Application Submittal: .....	\$ 275.00
Examination Fee Using Your Laptop and the ExamSoft Program:.....	\$ 450.00
Completing the Exam Manually: .....	\$ 600.00
Payable 30 Days Prior to the Examination	
Annual Fee:.....	\$ 300.00
Late Fee:.....	\$ 25.00

All certification fees are non-refundable.  
All fees are subject to change without notice.





N E L F

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