



PROGRAM FOR THE CERTIFICATION OF ELDER LAW ATTORNEYS

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 NELF, presents a brief history and overview of certification as well as the complete text of the NELF Rules and Regulations regarding certification of elder law attorneys.

What Is The National Elder Law Foundation?

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, through the board of directors, implements and administers a system to certify elder law attorneys. The 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 required to be attorneys, and not all of its members are members of NAELA. The American Bar Association's House of Delegates approved NELF 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. When all of the requirements of NELF 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 apprehensive 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 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 has developed their own programs for accrediting private organizations. Quite clearly this is an issue, that will not go away.

The issue was not if there would be private certifiers, but rather who the private certifiers would be. 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 elder law 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 NELF seed money to begin a voluntary certification program open to all attorneys.

How Is Elder Law Defined For Purposes Of The Certification Program?

Section 2 of the Rules and Regulations define 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 persons with special needs, their representatives and families about the legal aspects of health and long-term care planning, public benefits, surrogate decision-making, legal capacity, the conservation, disposition and administration of 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 and persons with special needs, or their representatives, with respect to abuse, neglect, or exploitation of 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 persons with special needs, 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, NELF board members, 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 NELF. The standards were adopted after much debate by NAELA's Board, NAELA's members and NELF's Board. However, to some extent the board was limited in how it could set those requirements.

To be useful to an attorney, the certification process must be approved by the ABA and the state bars. Thus, NELF'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, certification applicants 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 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 in 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 granted, certification is effective for five-years.

Re-certification is not automatic. It 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. The applicant must be licensed to practice law in at least one state or the District of Columbia.

2. **Practice.** The applicant 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 NELF' Standard Committee may credit such time toward this requirement.
3. **Integrity and Good Standing.** The applicant 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.** The applicant 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.** The applicant must have participated in at least forty-five (45) hours of continuing legal education in elder law during each of the three-years immediately preceding your short form application Peer Review/Professional References. The applicant must submit the names of five references from attorneys familiar with the applicant's competence and qualifications in elder law. These persons must themselves satisfy specified criteria. They will be contacted directly NELF's Executive Director and each person's response will be confidential and unavailable to the applicant.
6. **Examination.** The applicant must sit for the certification exam- ination within two-years of filing the short form application.

How Do I Start the Application Process?

Request the NELF Short Form Application packet by emailing a request to NELF at info@nelf.org, or by writing to the National Elder Law Foundation at 6336 N. Oracle Rd., Ste. 326, #136, Tucson, AZ, 85704. The packet contains an explanation of the certification program, a copy of NELF's Rules and Regulations, and the short form application. This application allows NELF to determine whether or not the applicant meets the initial requirements. If so, NELF's Long Form Application is then sent, including the notice to take the examination, which must be submitted at least 45 days before taking the examination. The entire application process, including the examination, must be completed within two-years after filing the initial short form application. The exam may be taken before or after filing the long form application.

What Will Certification Cost?

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| Short Form Application Fee: | \$ 25.00 |
| Long Form Application Fee: | \$575.00 |
| Examination Fee Using a Laptop and the ExamSoft Program: | \$500.00 |
| Examination Fee Using Virtual Proctor and the ExamSoft Program: | \$550.00 |
| Completing the Exam Manually: | \$600.00 |

Exam fees payable 45 Days prior to the examination.

Annual Fee, after first year of certification: \$600.00

Recertification Late Fee: \$150.00

All fees are non-refundable.

All fees are subject to change without notice.

NELF 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 directors of NELF and its committees have volunteered their time, costs are associated with their meetings.

Fees must be paid to the ABA and various state bars for NELF to be accredited, and annual fees are required to continue the accreditation. Those fees are high. Many states will not simply accept ABA's designation, thus requiring additional applications for accreditation, with accompanying fees, to the appropriate organizations.

Does The Applicant 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 any problem and refer the client to someone else who can serve that client. Thus Section 5.1.4.2 of NELF's 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 as Sections 5.1.4.2 (A) (1) through (6) and at least a working knowledge of Sections (7) 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.



THE NATIONAL ELDER LAW FOUNDATION RULES AND REGULATIONS REGARDING CERTIFICATION OF ELDER LAW ATTORNEYS

SECTION I

General Principles

- 4.3.1 NELF is dedicated to the development and improvement of the professional competence of lawyers in the area of elder law. 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.
- 1.1 Certification is individual and voluntary.
 - 1.2 Certification shall not in any way limit the right of a certified elder law attorney to practice law in all fields.
 - 1.3 No lawyer shall be required to obtain a certificate as an elder law attorney before practicing elder law.
 - 1.4 Certification is open to all who qualify. Application with the appropriate fee shall be made to NELF on the forms it shall supply.
 - 1.5 Certification is open to all qualified applicants without regard to age, race, religion, color, ethnic background, gender, sexual orientation, or physical ability.
 - 1.6 All applications and other information submitted to NELF as part of this certification process shall be privileged and confidential, except that NELF as 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 persons with special needs, their representatives and families about the legal aspects of health and long-term care planning, public benefits, surrogate decision-making, legal capacity, the conservation, disposition and administration of 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 and persons with special needs, or their representatives, with respect to abuse, neglect, or exploitation of 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 persons with special needs, 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.

SECTION 3

Administration

NELF shall certify all attorneys in elder law in accordance with NELF's Rules and Regulations. The certification system shall be administered by the board of directors through its examination, grading, standards and appeals and such other committees as the board of directors from time to time shall appoint. The president and other officers and members of the board of directors shall be appointed by the board of directors in accordance with NELF's Bylaws.

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.

4.2 Fees. The short form and long form application fees, annual fee, and examination fee shall be set by NELF and may be changed prospectively at any time.

4.2.1 Short Form Application and 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.

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 NELF at least forty-five (45) 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

by paying 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 and Disclosure Affidavit. Each certified attorney must: (1) pay an annual fee following the initial year of certification for the purpose of defraying the expenses of administering the certification program, and (2) complete and return an affidavit in the form approved by the standards committee disclosing any new informal or formal disciplinary actions, admission of malpractice or malpractice judgments against them and certifying continuing compliance with all Rules and Regulations.

4.3 Procedures

4.3.2 Short Form Application. Upon receipt of a completed short form application, the staff of NELF 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.

4.3.3 Long Form Application. Completion of certification process. Within 15 days of acceptance of the short form application, the applicant shall be sent NELF's Long Form Application, the confidential statement of reference forms, a sample exam 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.

4.3.4 Application for Re-Certification. The period of certification is five-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.

4.3.5 A properly completed application for re-certification shall be received by NELF 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.

4.3.6 Revocation and Suspension Criteria. NELF's Standards Committee may suspend, indefinitely or for a period of time, with or without conditions or revoke a certification, if:

- a. The certificate was granted contrary to NELF's Rules and Regulations;
- 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 NELF;
- c. The certificate holder has failed to abide by the Rules and Regulations promulgated by the NELF to govern the certification program;
- d. The certificate holder has failed to pay any applicable fee established by NELF;
- e. The certificate holder no longer meets the qualifications established by NELF;
- f. The certificate holder has been disciplined, disbarred, or suspended from practice by anybody 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.

4.3.7 Revocation and Suspension Process. Prior to revocation or suspension of a certificate of certification, NELF's Standards Committee 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 NELF. The certificate holder's written response shall be received by NELF

within thirty (30) days after the date of mailing said notice. After the thirty (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 fifteen (15) days after the decision has been made.

4.3.8 Certificate Holder Reporting Responsibilities. The certificate holder shall inform NELF promptly of any fact or circumstance described in Section 4.3.4. The certificate holder shall provide the NELF with written notice of any change of address immediately.

Re-Application for Certification. Any applicant denied certification or re-certification for reasons other than suspension or revocation may re-apply 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 and the reasons for same. The applicant will receive no credit for requirements that were satisfied in connection with the earlier application. 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.

Any applicant whose certificate has been suspended may re-apply for certification after the expiration of the time period of suspension and/or any conditions of suspension have been met. 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 suspended, and the reasons for the same. The applicant's file shall be available to the standards committee and the applicant shall be required to provide additional information relating to the suspension including proof to the satisfaction of the standards committee that the time period of suspension has expired and/or any conditions of suspension have been met. The applicant will receive no credit for certification requirements that were satisfied in connection with the earlier application.

Any applicant whose certificate has been revoked shall be entitled to re-apply for certification. 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 revoked, and the reasons for the same. The applicant's file shall be available to the standards committee and the applicant shall be required to provide additional information relating to the revocation including proof to the satisfaction of the standards committee that any factors that resulted in revocation have been satisfactorily resolved. The applicant will receive no credit for certification requirements that were satisfied in connection with the earlier application.

- 4.3.9 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 a consecutive 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 NELF's Standards Committee.
- 5.1.3 Integrity. The applicant shall disclose to NELF on the long form application, on the annual statement respecting continued CELA® certification form and at any time thereafter, any fact or circumstance described in Section 4.3.4. NELF shall accept as final the findings of any body authorized to impose professional discipline.
- 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:
 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. Estate and Long-Term Care 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 Planning, including counseling, 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, critical illness, 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.

While ethics is not a separate core area, ethics and professional responsibility permeate all aspects of elder law. Core areas and non-core areas encompass related ethical issues applicable to the call of the question.

- B. Of the 60 elder law matters, 40 must be in categories listed in 5.1.4.2.A. 1 through 6 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. 7 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 forty-five (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 (5) 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 NELF. NELF may authorize references from attorneys other than those with 800 hours of elder law practice, as it deems appropriate. NELF 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 NELF shall forward the confidential reference forms to the references.

5.1.6.2 Use of Information. NELF may deny certification based on information received which establishes, in the opinion of NELF's Board of Directors, that the applicant does not meet the minimum standards of certification as set forth in NELF's 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 shall apply for re-certification within the time limits as prescribed in Section 4.3.3. In order to qualify for re-certification, the applicant for re-certification must establish as of the date of the re-certification application that since the applicant's certification or most recent re-certification period, the applicant meets the minimum standards for: Good Standing set out in 5.2.1; Substantial Involvement set out in 5.2.2; Continuing Legal Education set out in 5.2.3; and Peer Review set out in 5.2.4.

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

5.2.2 Substantial Involvement. The applicant shall submit an affidavit verifying that he or she has continued to fulfill the requirements of Substantial Involvement as set out in 5.1.4.

5.2.3 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. 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.

5.2.4 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. NELF may authorize references from attorneys other than CELAs as it deems appropriate. NELF may also make additional inquiries as it deems appropriate.

5.2.5 Discretion to Request Additional Information. If, after reviewing the information submitted by the applicant and the responses of the references, NELF determines that the applicant may not meet the elder law standards established by NELF's Rules and Regulations, NELF 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.

5.2.6 Lapse of Certification. The failure of a certificate holder to apply in a timely manner 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 Appeal Procedure from a Decision by NELF's Standards Committee. After written notice has been sent that an application for certification or re-certification has been denied, or a certificate has been suspended or revoked or any petition brought pursuant to Section 6.1 has been denied, such action may be appealed to NELF's Board of Directors provided such appeal is received by the board within thirty (30) days of the date that the notice of denial was sent by the standards committee. The request for appeal may be informal, but shall be in writing and adequately identify the determination for which an appeal is requested, the date of mailing of such determination, the reasons the determination should be altered, and the relief requested. The board of directors shall decide whether to grant the requested relief after considering the appellant's request for appeal and any additional information obtained by the board. During the pendency of the appeal, the decision of the standards committee shall be stayed. The appellant shall be advised of the board of director's decision by written notice mailed within fifteen (15) days after the decision has been made.

6.2 Determination Relating to the Certification Examination. If a petition for reconsideration questions the applicant's performance on the certification exam, the petition shall be forwarded to NELF's Appeals Committee. The appeals 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 appeals committee's decision by written notice mailed within fifteen (15) days after the decision has been made.

6.3 Determinations Relating to the Certification Application or Standards. If a petition questions an aspect of the certification program other than the applicant's performance on the certification examination, a denial of an application for certification or re-certification, or a revocation or suspension of certification, the petition shall be forwarded to the standards committee. NELF's 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 fifteen (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 NELF's Executive Director 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 NELF's 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 NELF's Appeals Committee provided appellant has first reviewed his or her exam as provided above and appellant's score is not lower than ten [10] points below the minimum passing grade of 70%. 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 thirty (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. suggested 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 NELF's Appeals Committee is final.

SECTION 7

Notification of Certification

Upon certification or re-certification, NELF 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

Except as restricted by applicable law, an attorney holding a current certification from NELF shall use the following language to disclose the certification in written communication: "Certified as an Elder Law Attorney (which may be abbreviated "CELA" or "CELA®") by the National Elder Law Foundation."

SECTION 9

Amendments

These Rules and Regulations may be amended as provided in the bylaws of NELF.

1994, National Elder Law Foundation Revised December 1994

Revised August 1995

Revised May 2003

Revised November 2006

Revised April 2013

Revised January 2016

Revised April 2017

Revised April 2022



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