

# **THE SPECIALTY OF ELDER LAW- AND HOW TO GET CERTIFIED (From the NELF Website)**

## **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."

## **Definitions of Elder Law as Defined by the Rules and Regulations Related to the Certification of Elder Law Attorneys.**

"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.

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.

## **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.

RULE 5.1.4.1 sets out the number of hours necessary to meet the experience requirement and Rule 5.1.4.2 set out the Task Requirements.

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. 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 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.
  - 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,