

ELDER LAW CERTIFICATION  
STANDARDS  
OHIO STATE BAR ASSOCIATION  
STANDARDS OF SPECIALIZATION

**ELDER LAW**

SECTION 1: INTRODUCTION AND POLICY STATEMENT

1.1 **Introduction.**

The Ohio State Bar Association Elder Law Specialty Certification Program is accredited by the Ohio Supreme Court Commission on Certification of Attorneys as Specialists (CCAS).

This document outlines the Standards by which the OSBA will certify attorneys as specialists in the field of Elder Law. These Standards will ensure that an attorney certified under this program possesses an enhanced level of skill and expertise as well as substantial involvement in Elder Law. These Standards are further designed to foster professional development and expertise and to enable the Association to thoroughly evaluate the credentials of attorneys seeking certification.

Finally, the ultimate function and most important goal of these standards is to facilitate public access to appropriate legal services.

1.2 **Nondiscrimination Statement.**

The OSBA Elder Law Specialty Certification Program does not discriminate against lawyers seeking certification on the basis of race, color, national origin, religion, gender, sexual orientation, disability or age. Experience requirements for lawyers seeking Certification that may have an effect on a particular age group are reasonable.

1.3 **Organization Statement.**

The OSBA, founded in 1880, is a voluntary professional association open to any person who has been admitted to the practice of law, law school students, paralegals, and legal administrators. The Association's goals are to:

- advance the science of jurisprudence;
- promote improvement of the law and administration of justice;
- uphold integrity, honor and courtesy in the legal profession and encourage and enforce adhere to highest standards of professional conduct;
- take positions on matters of public interest as deemed advisable;
- encourage thorough legal education;
- cultivate cordial relations among members of the Bar; and
- perpetuate the history of the profession and the Association.

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SECTION 2: DEFINITIONS

2.1 **As used in these Standards:**

- (a) “Applicant” -- An attorney applying to be certified as a specialist under these Standards.
- (b) “Application Form” -- The form created and/or approved by the Association, the Specialization Committee and/or the Specialty Board, as may be applicable, that is used to apply for certification under these Standards.
- (c) “Association” -- The Ohio State Bar Association.
- (d) “Certified/Certification” -- The result of an applicant successfully completing the application or re-application process under these Standards.
- (e) “The Commission” -- The Commission on Certification of Attorneys as Specialists established pursuant to Section 2 of Rule XIV of the Supreme Court Rules for the Government of the Bar of Ohio.
- (f) “Elder Law”-- “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.”
- (g) “Recommendation Form” -- The form provided to designated third parties to recommend an applicant for certification.
- (h) “Specialty Board” -- The body approved by the Association’s president upon the recommendation of the Elder Law Committee chair pursuant to Section 4 of the Standards.
- (i) “Standards” -- The criteria contained in these Standards that determines whether an applicant will or will not be certified as a specialist in the field of Elder Law.
- (j) “Committee”-- The Elder Law Committee of the Ohio State Bar Association.

SECTION 3: AUTHORITY

- 3.1 The authority to grant, revoke, or re-grant certification in the specialty field is vested in the Association and its designees.
- 3.2 No provision contained herein shall in any way limit the right of an attorney certified as specializing in the specialty field to practice law in any other field or to act as counsel in any other type of legal matter.

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- 3.3 Further, no attorney shall be required to be certified as specializing in the specialty field before he or she can practice law in such field of law or act as counsel in any particular type of Elder Law matter.
- 3.4 The Association will apply the Standards without discriminating against lawyers seeking certification on the basis of race, color, national origin, religion, gender, sexual orientation, disability, or age.

### SECTION 4: THE SPECIALTY BOARD

- 4.1 The Elder Law Specialty Board is charged with oversight of the administration of the Standards.
- 4.2 The Specialty Board shall be composed of between six (6) and twelve (12) members appointed by the President of the Association upon the recommendation of the Committee Chair. Each member of the Specialty Board must be a lawyer who has substantial experience in the specialty area. Each member of the Specialty Board will be appointed to a term of four years and may serve additional terms.
- 4.3 A member of the Specialty Board serves at the pleasure of the President of the association. The Specialty Board by vote of the majority may recommend removal of a member for cause.
- 4.4 The Specialty Board may determine its own meeting and related schedules and its own internal operating procedures.

### SECTION 5: CERTIFICATION REQUIREMENTS

An applicant for certification as a specialist in the specialty field must be an attorney licensed to practice law in the State of Ohio. Further, the applicant must be in good standing with the Supreme Court of Ohio, and must meet the following requirements as of the date of the filing of the application:

#### 5.1 **Substantial Involvement.**

The Applicant seeking certification shall be required to make a satisfactory showing of experience through substantial involvement in the specialty area during the five-year period immediately preceding the application. Substantial involvement includes, but is not limited to, the type and number of cases or elder law matters such as health and personal care planning, pre-mortem legal planning, fiduciary representation, legal capacity counseling, public benefits, special needs counseling, advice on insurance matters, resident rights advocacy, housing counseling, employment and retirement advice, litigation and administration advocacy. It may also include other appropriate criteria such as time spent teaching or publishing in the specialty field. The applicant must make a satisfactory showing that he or she has engaged in a minimum of 520 hours per year (25% of a normal full time practice) practicing in the specialty field in each of the most recent five (5) year calendar periods preceding the application.

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### 5.2 **Peer Review/Recommendations.**

The applicant seeking certification shall be required to submit the names of seven (7) attorneys or judges, who are familiar with the competence of the applicant in the specialty field, none of whom are related to, or currently engaged in legal practice with the applicant. The Specialty Board will send the appropriate recommendation forms directly to the seven (7) references. A minimum of five (5) completed reference forms must be returned to the Association for that section of the application to be considered complete.

The reference forms shall inquire into the respondent's length and area of practice, the respondent's familiarity with both the specialty area, and with the lawyer seeking certification. The form also shall inquire about the qualifications of the lawyer seeking certification in various aspects of the practice. The Specialty Board may, on its own initiative, request information from additional references.

### 5.3 **Written Examination.**

The applicant shall make a satisfactory showing of competence in elder law by successfully completing a written examination. The examination will 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.

The written examination will be prepared and graded by the National Elder Law Foundation (NELF). The validity and reliability of the examination will be ensured by the National Elder Law Foundation.

For an applicant already certified as an Elder Law Specialist by NELF in the two years preceding the application, the requirement of the written exam is waived. An applicant to the OSBA Elder Law Specialty Board must meet the other OSBA certification requirements no later than December 31<sup>st</sup> of the calendar year after the calendar year in which the applicant passes the NELF exam.

An attorney who is already certified by NELF as an Elder Law Specialist prior to the CCAS approval of the accreditation application to the OSBA will have the written examination requirement waived upon successful completion of the application requirements to the OSBA Elder Law Specialty Board within two years after the CCAS accreditation of the OSBA.

OSBA and NELF will accept on a reciprocal basis the NELF written examination scores for a period of two years. For example, if an applicant for OSBA Elder Law Specialty Certification has passed the NELF written examination within the two years preceding the OSBA application, the applicant will be exempted from retaking the examination, and need only to meet the other eligibility requirements.

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5.4 **Continuing Legal Education.**

The Applicant seeking certification shall be required to complete a minimum of forty-five (45) hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer's application for certification. Continuing Legal Education (CLE) must meet the requirements of Rule X Section 4, of the Supreme Court Rules of the Government of the Bar of Ohio. Applicants must include a copy of their CLE transcript with their application for certification and must include proof of attendance of all courses not listed on the transcript. CLE must be of "intermediate" or "advanced" level. CLE hours in the field do not include credit for attendance at seminars promoted as "basic" or "introductory" in nature, but may include speaking at such seminars.

5.5 **Certificates of Good Standing & Liability Coverage:** The applicant seeking certification shall furnish satisfactory evidence that:

- a. The lawyer is active and in good standing pursuant to Gov. R. VI of the Supreme Court of Ohio, and the lawyer's fitness to practice is not in question by virtue of disciplinary action in Ohio or in another state;
- b. Coverage by professional liability insurance is continually maintained through a reputable company in an amount not less than Five Hundred Thousand Dollars (\$500,000) per loss;
- c. The lawyer has demonstrated the ability to pay all claims that fall within the deductible amount selected by the attorney under the insurance policy.

Professional liability insurance will not be required of those lawyers who can demonstrate to the Association's satisfaction that the lawyer's practice relationship with the lawyer's clients will fully cover any professional liability claim made against the lawyer in an amount not less than five hundred thousand dollars (\$500,000) per loss.

The lawyer shall notify the Association immediately of any cancellation or change in coverage.

5.6 **Disciplinary Action:** When filing an initial application or application for recertification, the applicant shall disclose:

- a. any disciplinary action taken against the applicant by the Supreme Court of Ohio, any federal or state administrative agency, or other agencies of competent jurisdiction.
- b. any pending or prior malpractice complaint, judgment, settlement or admission of malpractice.
- c. any felony conviction that arose after the date the attorney was admitted to the practice of law.

Failure to disclose such information is a material misrepresentation and may cause rejection or decertification. Failure to maintain good standing with the Supreme Court of Ohio shall result in immediate decertification as a specialist.

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Applicant need not disclose disciplinary complaints or matters that were closed or dismissed without discipline.

If an attorney is disciplined by the Supreme Court of Ohio; any federal or state administrative agency, other agencies of competent jurisdiction or is deemed no longer in “good standing” with the Supreme Court of Ohio during any time during which they are certified, the certified specialist has a period of sixty (60) days from the date the action is taken by the Supreme Court of Ohio to disclose this information to the OSBA Specialty Board.

### SECTION 6: ANNUAL REPORT

- 6.1 Any attorney certified under the Standards, in order to maintain his or her certification, must annually report:
- a. that there have been no material changes in the information submitted in the attorney’s application for certification. If there have been material changes, the changes must be detailed in full.
  - b. that in addition to the requirements of Rule X, he or she has completed twelve (12) hours of Continuing Legal Education in the specialty field for every two (2) years of certification, as set forth in Section 5.4 herein. Affidavits or forms are due to be filed with the Specialty Board, or the Association as may be later determined, between October 1<sup>st</sup> and no later than December 1<sup>st</sup> of each year that an attorney is certified under these Standards. Annual reports must be accompanied by fees as established by the fee schedule in Section 10.

### SECTION 7: CERTIFICATION PERIOD AND RE-CERTIFICATION

- 7.1 The certification period under these Standards is a period of six years. In the sixth year of certification, the attorney must apply to be recertified for an additional six years.
- 7.2 In the calendar year preceding the expiration date of an attorney’s certification under these standards, an attorney certified under the standards must apply for recertification under the same criteria as set forth in Section 5 hereof, with the exception of sub-section 5.3 (written examination). A complete application for recertification must be filed by December 1<sup>st</sup> of the calendar year. Recertification applications must be accompanied by fees as established by the fee schedule in Section 10. Failure to submit an application for recertification will result in de-certification.

### SECTION 8: DECERTIFICATION

- 8.1 The Specialty Board, by an affirmative vote of the majority of its members, may decertify an attorney previously certified under the Standards if material changes are reported on the affidavit or form, or information comes to the Specialty Board’s attention that the attorney involved would no longer be qualified for certification or recertification under the standards. Any attorney may be decertified if the annual fee is not paid. Any decertified attorney may request reconsideration and, if denied, appeal the decertification pursuant to the Appeals Procedures in Section 9.

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### SECTION 9: APPEALS PROCEDURE

9.1 **Notice of Action.** An applicant who is denied certification (except in the event of not achieving a passing score on the examination, see section 9.5), or a specialist who is denied recertification, will be notified by registered or certified mail sent to the lawyer's last known address of the OSBA Specialty Board's ("Board") decision ("Notice"). The reasons for the Board's action shall be set forth in that Notice. The Notice shall advise the lawyer that he or she may file, within 30 days of the receipt of the Notice, a Request for Reconsideration of the Board's decision.

9.2 **Reconsideration.** The Request for Reconsideration shall include any additional information or supporting material that the lawyer believes will help the Board in its reconsideration of the initial decision. The Board's decision shall be reconsidered by the entire Board or a committee of the Board appointed by the chairperson.

The Board shall send the reconsideration decision in writing to the applicant or specialist by registered or certified mail within 45 days of the receipt of the Request for Reconsideration setting forth the reasons for the decision. The Board shall notify the applicant or specialist that he or she may, within 30 days of the receipt of the decision on Reconsideration, appeal in writing to an Independent Review Panel.

9.3 **Independent Review Panel.** If a request by an applicant or a specialist is made for an appeal to an Independent Review Panel, the chair of the OSBA membership Committee shall appoint a three-person Independent Review Panel. The Independent Review Panel shall include at least two persons whose practice is primarily in the same specialty area. When the subject of the appeals relates to a matter of substantive law, the entire Independent Review Panel shall be comprised of persons whose practice is primarily in the same specialty area. No member of the Review Panel shall have had previous involvement in considering the applicant's or specialist's applications.

9.4 **Hearing.** The hearing before the Independent Review Panel will be *de novo*. The Board may send a representative to the Independent Review Panel hearing. The Independent Review Panel may consider any relevant evidence, including hearsay, if it is the type of evidence upon which reasonable persons rely, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. The Independent Review Panel may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

The Independent Review Panel shall report its findings, and decision to the Board. The Board shall notify the applicant or specialist of that decision by registered or certified mail sent to the lawyer's last known address. The decision of the Independent Review Panel shall be final.

9.5 **Appeals Relating to the Certification Examination.** (Please note: This is the NELF examination appeal and is subject to any changes through the NELF standards.)

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- 9.5.1 **Appeal.** An appellant who fails to achieve a passing score on the NELF examination 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 OSBA to facilitate the convenience of the appellant and shall be held within forty-five (45) days after the NELF 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 NELF 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 the 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;



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d. the appellant’s written response and oral presentation to the Appeals Committee (if any); and

e. any other information or documentation it might find pertinent in determining its findings.

The decision of the Appeals Committee is final.

SECTION 10: ADOPTION AND AMENDMENT

10.1 These Standards are effective upon the approval thereof by the Association’s Board of Governors and the Supreme Court Commission.

10.2 The power to amend these Standards is vested in the Association’s Board of Governors, and/or the Commission.

10.3 The Standards further incorporate any further rules or regulations that the Commission may later issue as to the creation of a specialty plan or a specialty board. Any language in these Standards that is contrary to any provisions of any Commission future rules or regulations is deemed to be null and void and is to be replaced by such contrary language, subject only to the Section’s decision to withdraw its Plan of Specialization.

SECTION 11: FEES (non-refundable)

11.1 OSBA Application Fee: OSBA Member \$250  
Non-Member \$300

11.2 NELF Exam Fee:  
Examination Fee Using your Laptop  
And the ExamSoft Program \$450

Completing the Exam Manually \$600  
Exams fees payable 45 days prior to the examination date.  
**All examination fees must be made payable to NELF**

11.3 OSBA Annual Reporting Fee: OSBA Member: \$125  
Non-Member: \$150

11.4 OSBA Re-certification fee: OSBA Members/Non-Members: \$200