

Ohio State Bar Association

Elder Law

Attorney Information and Standards



**Accredited by the
Supreme Court Commission
on Certification of Attorneys as Specialists**

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ATTORNEY INFORMATION & STANDARDS

Ohio State Bar Association

Specialty Certification

Elder Law

SECTION 1: INTRODUCTION & POLICY STATEMENTS

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 Board 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 and legal assistants sponsored by an OSBA member.

From the date of its founding until today, the Association's working goals have been to:

- advance the science of jurisprudence;
- promote improvements of the law and administration of justice;
- uphold integrity, honor and courtesy in the legal profession and encourage and enforce adherence to high 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.

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 or OSBA” -- 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) “Commission” -- The Supreme Court Commission created by Section 2 of Rule XIV of the Supreme Court Rules of 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 created and/or approved by the Association, the Specialization Committee, and/or the Specialty Board, as may be applicable, that is to be provided to designated third parties to recommend an applicant for certification.
- (H) “Specialty Board” -- The Board appointed by the Association’s president upon the recommendation of the chair of the Elder Law and Special Needs Committee pursuant to Section 4 of the Standards.
- (I) “Standards” -- The criteria that determines whether an applicant will or will not be certified as a specialist in the field of Elder Law.
- (J) “The Elder Law and Special Needs Committee” -- The Elder Law and Special Needs Committee of the Ohio State Bar Association.

SECTION 3: AUTHORITY

- 3.1 The authority to grant, revoke, or re-grant certification in the field of Elder law is vested in the Association and as also may be delegated to the Specialization Committee, and to the Elder Law and Special Needs Committee and its Specialty Board.
- 3.2 No provision contained herein shall in any way limit the right of an attorney certified as specializing in the field of Elder Law to practice law in any other field or to act as counsel in any other type of legal matter. Any attorney, alone or in association with any other attorney(s), shall have the right to practice in all fields of law, even though he or she is certified as specializing in the field of Elder Law.
- 3.3 Further, no attorney shall be required to be certified as specializing in the field of Elder Law before he or she can practice law in such field of law or act as counsel in any particular type of elder law matter. Any attorney, alone or in association with any other attorney(s), shall have the right to practice in the field of Elder Law and to act as counsel in every type of elder law matter, even if he or she is not certified as being specialized under the Standards.

SECTION 4: CREATION OF THE SPECIALTY BOARD

4.1 There is created an Elder Law Specialty Board attached to the Elder Law and Special Needs Committee. The purpose of the Specialty Board is, with the staff and financial assistance of the Association, to oversee the administration of the Standards.

4.2 The Specialty Board is to be composed of between eight (6) and twelve (12) individuals, the majority of whom will be attorneys generally recognized as experts in the field of Elder Law. The initial composition of the Specialty Board is to be of four (4) members chosen to serve a two (2) year term, four (4) members chosen to serve a three (3) year term, and with any remaining members chosen to serve a six (6) year term. Thereafter, each member will serve a term of six (6) years and must be an OSBA Certified Specialist in Elder Law or an academic. Board members will be appointed by the OSBA president upon the recommendation of the chair of the OSBA Elder Law and Special Needs Committee and the Chair of the Elder Law Specialty Board. The chair of the OSBA Elder Law and Special Needs Committee shall be an ex-officio member of the Specialty Board.

4.3 All Specialty Board members serve on a volunteer basis, without pay, and are not considered to be employees of the Association, or the Specialty Board.

4.4 A member of the Specialty Board does not have to be a member of the Elder Law and Special Needs Committee or of any other committee or section, but must be an OSBA member.

4.5 No member of the Specialty Board may be initially certified under the Standards unless they have been off the Specialty Board for a period of one testing cycle.

4.6 A member of the Specialty Board may be removed during his or her term by a two-thirds affirmative vote of the other members of the Specialty Board for just cause, such as neglect of duty. A Specialty Board member is entitled to a hearing before the Specialty Board prior to his or her removal, and an appeal may be taken within sixty (60) days after any such removal to an Independent Review Panel.

4.7 The Specialty Board shall determine its own meeting and related schedules and its own internal procedures.

SECTION 5: CERTIFICATION REQUIREMENTS

An applicant for certification as a specialist in the field of Elder Law must be an attorney licensed to practice law in the State of Ohio and in good standing and, in addition, must meet the following mandatory 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.

5.2 **Specialists Who Become Judges:** No sitting, full-time judge or magistrate may represent or hold

the judge's or magistrate's self out as a certified specialist nor may any Accrediting Organization represent or hold out a sitting, full-time judge or magistrate as a specialist. When a certified specialist assumes a position of sitting, full-time judge or magistrate, the date on which the specialist's certification would otherwise expire shall be noted by the Accrediting Organization. If the specialist's tenure as a sitting, full-time judge or magistrate concludes before that expiration date, and provided the specialist has in the interim continued to satisfy the continuing legal education requirements of Gov. Bar R. XIV, the judge's or magistrate's certification may resume upon request, subject to any reasonable requirements of the Accrediting Organization, and continue until the next expiration date.

5.3 Peer Review/Recommendations: The applicant must submit with his or her application for certification, the names of seven (7) separate individual references, none of which may be related to or associated with the applicant in the practice of law by way of partnership or any other professional association. The OSBA will forward the appropriate recommendation forms to the seven (7) references. A minimum of five (5) completed reference forms must be returned to the OSBA for the application to be considered complete. If more than five (5) references are returned to the OSBA, the board may consider all of the references completed and returned. Persons recommending applicants for specialty certification must themselves demonstrate a familiarity with the competence of the applicant in the field of Elder law. References must come from attorneys already certified in Elder law, sitting judges, magistrates or from an attorney who meets the "substantial involvement" requirement and who are familiar with the applicant's competency in the specialty. The Specialty Board reserves the right to reject recommendations and request additional recommendations not listed by the applicant. The recommendations in regard to thereto shall be forms created by the Association, or Specialty Board for such purposes.

5.4 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 31st 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.

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 continually maintained through a reputable company that is admitted in Ohio, 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

- (i) can demonstrate to the OSBA'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.
- (ii) Are employed by an entity, other than a law firm, whose sole professional practice is for that entity;
- (iii) Are employed by a governmental entity which would be immune from liability claims.

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

5.6 **Disciplinary Action:**

- a. Applicants for certification or recertification shall furnish satisfactory evidence of their fitness to practice and good standing with the Ohio Supreme Court.
- b. When filing an initial application or application for recertification, the applicant shall disclose to the appropriate Ohio State Bar Association Specialty Board 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.
 - The applicant shall disclose to the Ohio State Bar Association Specialty Board any pending or prior malpractice complaint, judgment, settlement or admission of malpractice. Each matter involving a civil suit must contain a copy of the complaint, answer and final judgment entry. Each settlement or admission of malpractice must contain a description of the underlying claim of malpractice and how the claim was resolved.
 - The applicant shall disclose to the Ohio State Bar Association Specialty Board any felony conviction that arose after the date the attorney was admitted to the practice of law. Applicant must provide a copy of the indictment or bill of information, order of conviction and sentence.

Failure to disclose such information is a material misrepresentation and may cause rejection or decertification.

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

- d. An attorney must immediately report any discipline 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.
- e. Failure to maintain good standing with the Supreme Court of Ohio shall result in immediate decertification as a specialist.

5.7 **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.

SECTION 6: DUTY TO SUBMIT ANNUAL REPORT, ANNUAL FEE

6.1 **Certification:** An applicant for certification will be deemed certified as a specialist in the field of Elder Law upon the successful completion of the requirements herein and the affirmative decision of the majority of the members of the Specialty Board. The certification will be effective on the January 1st following the Specialty Board’s decision approving an applicant’s certification. Any applicant denied certification at any stage of the process may appeal the denial under the procedures set forth in these Standards under Section 10: Appeals Procedure. Notwithstanding such procedures, an applicant may also bring a clerical or related error to the Specialty Board’s attention within thirty (30) days of the issuance of notice to the applicant of the complained of action allegedly caused by a clerical or like error.

6.2 **Annual Report:** Any attorney certified under the Standards must, in order to maintain his or her certification, annually report by way of affidavit, or upon a form that may later be created for such purpose, that there have been no material changes in the information submitted in the attorney’s application for certification. If there have been material changes, then such changes must be detailed on a form to the Elder Law Specialty Board. Further, the certified attorney must show that, in addition to the requirements of Rule X, he or she has completed twelve (12) hours of continuing legal education every two years of certification, with the continuing education hours meeting the criteria set forth in Section 5.7 herein.

Said affidavit or form is due to be filed with the Specialty Board, or the Association, as may be determined, between October 1st and December 1st of each year that an attorney is certified under these Standards. Annual reports must be accompanied by annual fees as established by the fee schedule of the OSBA, section 9 hereof. The Specialty Board, by an affirmative vote of the majority of its members, may de-certify an attorney previously certified under the Standards if material changes reported on the affidavit or form, or that may otherwise come to the Specialty Board’s attention, are such that the attorney involved would no longer be qualified for certification or re-certification under the Standards. Any attorney so de-certified may request reconsideration and, if denied, appeal such de-certification pursuant to the procedures outlined by these Standards under Section 10: Appeals Procedure. or any such subcommittee thereof convened for such purposes.

Any attorney certified under the Standards who has his or her license to practice law in the State of Ohio revoked or suspended shall automatically be deemed de-certified as of the date of said revocation or suspension without regard for the procedures listed in the foregoing paragraph. Upon any later reinstatement of the license to practice law in the State of Ohio, such reinstated attorney would be eligible to reapply for certification under the Standards.

SECTION 7: CERTIFICATION PERIOD AND RE-CERTIFICATION

7.1 The certification period under these Standards is a period of six years.

7.2 In the calendar year preceding the expiration date of an attorney's certification under these standards, hereinafter referred to as "the calendar year", 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 5.4 (written examination) and provided that the CLE criteria shall be as set forth in Section 6.2 hereof. Applications for recertification shall be available between October 1st and December 1st of the calendar year. If a full and complete application is not completed by December 31 of the calendar year, the applicant shall be decertified, and must apply for recertification under the same criteria as set forth in Section 5 hereof including the written examination.

(a) A certified specialist may exempt from the requirements of Section 6.2 & Section 7 of these standards in the event of a severe, prolonged illness or disability that prevents the specialist from participating in accredited continuing legal education programs and activities and in the requirements for certification renewal established by the Commission and the OSBA as follows:

(1) Before the deadline for recertification, the lawyer shows, by a preponderance of the evidence and to the satisfaction of the certifying organization, that completing the requirements for recertification presents an extreme hardship and that recertification is significantly more difficult as a result of the severe, prolonged illness or disability;

(2) After the deadline for recertification, the lawyer shows, by a preponderance of the evidence and to the satisfaction of the certifying organization, that completing the requirements for recertification presented an extreme hardship, that recertification was significantly more difficult as a result of the severe, prolonged illness or disability, and that there exists an adequate explanation as to why the lawyer did not seek exemption prior to the end of the lawyer's certification period.

(3) The duration of an exemption granted pursuant to Section 7.2 (a) of this section shall be dependent upon the severity of the lawyer's illness or disability and may be limited, as determined by the OSBA and the specialty board.

SECTION 8: ADOPTION AND AMENDMENT

8.1 These Standards were effective upon the approval thereof by the Association's Board of Governors and the Supreme Court Commission.

8.2 The power to amend these Standards is vested in the Elder Law Specialty Board, subject only to review and approval by the OSBA the Association's Board of Governors, and/or the Commission.

8.3 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 Elder Law & Special Needs Committee's decision to withdraw its Plan of Specialization.

SECTION 9: FEES

- 9.1 **Application fee:** Applicants must submit a one-time non-refundable application fee:
- | | |
|--------------|-------|
| OSBA member: | \$250 |
| Non-members: | \$300 |
- 9.2 **Exam fee:** Applicants must pay a non-refundable exam fee each time the exam is administered:
- | | |
|---------------|-------|
| OSBA members/ | \$225 |
| Non-members: | \$275 |
- 9.3 **Annual reporting fee:** Applicants must pay a non-refundable annual reporting fee each year after certification of:
- | | |
|--------------|-------|
| OSBA member: | \$125 |
| Non-member: | \$175 |
- 9.4 **Re-certification fee:** Applicant must pay a non-refundable recertification fee of:
- | | |
|--------------|-------|
| OSBA members | \$200 |
| Non-member: | \$250 |

SECTION 10: APPEALS PROCEDURE

10.1 **Notice of Action.** An applicant who is denied certification, 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.

10.2 **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.

10.3 **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 Specialization 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.

10.4 **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.

Adopted by the Board of Governors 2008

Amended by the Board of Governors December 12, 2014

Amended by the Board of Governors – February 16, 2018