

27 NCAC 01D .2905 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN ELDER LAW

Each applicant for certification as a specialist in elder law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in elder law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of elder law.

- (1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of elder law, but not less than 400 hours in any one year. Practice shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.
- (2) Practice equivalent shall mean service as a law professor concentrating in the teaching of elder law (or such other related fields as approved by the specialty committee and the board) for one year or more. Such service may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2905(b)(1) above.

(c) Substantial Involvement Experience Requirements - In addition to the showing required by Rule .2905(b), an applicant shall show substantial involvement in elder law by providing information regarding the applicant's participation, during the five years immediately preceding the date of the application, in at least sixty (60) elder law matters in the categories set forth in Rule .2905(c)(3) below.

- (1) As used in this section, an applicant will be considered to have participated in an elder law matter if the applicant:
 - (A) provided advice (written or oral, but if oral, 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.
- (2) Of the 60 elder law matters:
 - (A) forty (40) must be in the experience categories listed in Rule .2905(c)(3)(A) through (E) with at least five matters in each category;
 - (B) ten (10) must be in experience categories listed in Rule .2905(c)(3)(F) through (N), with no more than five in any one category; and
 - (C) the remaining ten (10) may be in any category listed in Rule .2905(c)(3), and are not subject to the limitations set forth in Rule .2905(c)(2)(B) or (C).
- (3) Experience Categories:
 - (A) 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, attorneys-in-fact, and families about medical and life-sustaining choices, and related personal life choices.
 - (B) 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 tax implications of any proposed action.
 - (C) 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.
 - (D) 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.
 - (E) public benefits advice including planning for and assisting in obtaining Medicaid, supplemental security income, and veterans benefits.

- (F) special needs counseling, including the planning, drafting, and administration of special/supplemental needs trusts, housing, employment, education, and related issues.
- (G) 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, and burial/funeral policies.
- (H) 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.
- (I) housing counseling including reviewing the options available and the financing of those options such as: mortgage alternatives, renovation loan programs, life care contracts, and home equity conversion.
- (J) employment and retirement advice including pensions, retiree health benefits, unemployment benefits, and other benefits.
- (K) counseling with regard to age and/or disability discrimination in employment and housing.
- (L) 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.

(d) Continuing Legal Education - An applicant must earn forty-five (45) hours of accredited continuing legal education (CLE) in elder law during the three full calendar years preceding application and the year of application, with not less than nine (9) credits earned in any of the three calendar years. Elder law CLE is any accredited program on a subject identified in the experience categories described in subparagraph (c)(3) of this rule.

(e) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina and have substantial practice or judicial experience in elder law or in a related field as set forth in Rule .2905(d). An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned directly to the specialty committee.

(f) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of elder law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee or by any ABA accredited elder law certification organization with which the board contracts pursuant to Rule .1716(10) of this subchapter.

History Note: Authority G.S. 84-23;

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