

NO MORE RE-CERTIFICATION EXAMS FOR CELAS

By Rolf Nelson, Pres.
National Elder Law Foundation (NELF)

The ABA's Standing Committee on Specialization approved the National Elder Law Foundation (NELF) Board's proposal to terminate the Re-Certification Exam for Certified Elder Law Attorneys (CELAs) Nov. 10, 2006. The NELF proposal emerged as a key recommendation at the close of the two day retreat of NELF board members in late September.

The proposal was well received by Certified Elder Law Attorneys (CELAs) who attended the NAELA Institute in Salt Lake City November 2-5. When introducing the NELF program's speaker, Natalie Choate, I disclosed to over 140 CELAs in attendance that our board had taken action to end the Re-Cert Exam and that the proposal was already on the agenda of the ABA's Committee scheduled to meet November 10th in Seattle. The news engendered a standing ovation by CELAs present.

At noon on November 10th I reported to the ABA's Committee that the ABA Standards for Specialty Certification do not require any exam for re-certification. Also, an abundance of time and resources are consumed by the re-certification exam.

The Re-Cert Committee has to create the exam questions and model answers. Then the re-certifying CELA must devote time to taking the exam and finally, the Re-Cert Committee must devote time to grading all the exams. Although an "open-book" exam, I said my own experience, in twice taking the test, was that I'd write an answer one day, think about it for another day or two, get further insights or ideas and feel that I must go

back and revise my previous answer one or more times to each question. Finally, I reported that of the 400+ re-certification exams taken in the last 12 years, only two CELAs had failed it. I suggested a 99 1/2 % pass rate indicates the exam is of little value in determining continued competence in Elder Law.

I am delighted to report that the ABA Committee took favorable action on Nov. 10 that terminates the 18 year old requirement of passing a written exam as a prerequisite to being re-certified as a CELA. This means that CELAs slated for re-certification after November 10, will not now have to take the test. Effective November 10, NELF staff will no longer include the open-book exam as part of the re-certification process.

Other Changes Approved by the ABA

In addition to ending the re-certification exam, the ABA Committee approved the Board's expansion of Elder Law CLE credit hours for Re-Cert from 60 to 75. The ABA Committee also approved the board's proposal to accept up to half, or 37.5 hours, of "telephonic" Elder Law CLE credits. The other half will still need to be "in-person".

ABA Committee Took Opportunity to Change Original NELF Rule

During my appearance by conference call, the ABA Committee also adopted a change to NELF Rules that the board did not request. The ABA Committee advised me that giving CLE credits for participating in "professional committees" was frowned upon under ABA

standards. I was told that a question had been raised when NELF was first organized in 1994 about Rule “5.1.5 Continuing Legal Education”. The rule could allow up to 20 hours of CLE credit over 5 years, “at the discretion of the Standards Committee” for, “actively participating in the work of professional committees dealing with substantive or procedural problems of elder law”. The Committee also asserted that this practice is currently discouraged or prohibited altogether by bar organizations in virtually every state.

I suggested that most CELAs have more Elder Law CLE credits than they need, thus don’t even consider using the opportunity to get credit for “committee activities”. Moreover, I said I’d never even heard of anyone asking. It seemed a “harmless” revision, so I chose not to object.

The ABA Committee unanimously adopted a motion to delete the CLE credits for bar committee work in the NELF rule. NELF Executive Director, Debbie Barnett later told me she was unaware of any CELA ever even requesting CLE Credits for bar committee work under the old rule.

ABA Committee Turned Down Only One Item in the NELF Proposal

The ABA Committee objected to only one proposed change. That change was the requirement that one of the five attorney references for a new CELA Applicant be a CELA.

The concern was that an “anti-competitive” or “Good Old Boys Club” mentality in a community could be enabled under the change. The Committee worried that if such occurred, some capable CELA candidate might be denied the opportunity to seek CELA Certification.

I discounted the likelihood of that happening. However, replacing the “shall” in Rule “5.1.6.1 Providing the Names of References” in the phrase, “one shall be a certified elder law attorney . . .” with a “may” made Committee members comfortable. Most important, it did

not alter the priority items in our proposal nor change what we really wanted to be approved, so I concurred with the suggested change. With these two minor exceptions, all other changes sought by the NELF Board were approved. Thus the ABA’s Standing Committee on Specialization approved the heart of our proposal.

After appearing before the ABA Committee, I suggested to NELF board members that they, “Go out and celebrate the end of Re-Certification Exams”. To all present and future CELAs who read this article, I suggest they do the same.

Note about the author: Mr. Nelson became a CELA in 1996. Since 1997 Mr. Nelson has served on the CELA Exam Committee writing multiple choice and essay questions, model answers as well as grading hundreds of exams. In 2002 he was elected to the NELF Board of Directors. Mr. Nelson was elected President of NELF by the Board in April, 2006.

Mr. Nelson founded the Estate Crafters® law firm where he currently practices Elder Law and Estate Planning in the metropolitan area of Minneapolis, Minnesota.