

1 **6-22. STANDARDS FOR BOARD CERTIFICATION OF A BOARD-CERTIFIED IN**
2 **ANTITRUST AND TRADE REGULATION LAWYER**

3 **RULE 6-22.1 GENERALLY**

4 A lawyer who is a member in good standing of The Florida Bar and who meets the
5 standards prescribed below may be issued an appropriate certificate identifying the lawyer as a
6 "Board Certified in Antitrust and Trade Regulation Lawyer." The purpose of the standards is to
7 identify those lawyers who practice in the area of antitrust law, unfair methods of competition,
8 fraudulent, and deceptive, unfair, or unconscionable trade practices, unfair competition, false
9 advertising and consumer protection, and who have the special knowledge, skills, experience,
10 and judgment, as well as the character, ethics, and reputation for professionalism, to be properly
11 identified to the public as certified antitrust and trade regulation lawyers. ~~Applicants shall be~~
12 ~~required to establish that they have a special ability as a consequence of broad and varied~~
13 ~~experience in antitrust and trade regulation law, including the following:~~

14 ~~(a) — a ready grasp of the substantive and procedural law bearing upon this area of~~
15 ~~practice;~~

16 ~~(b) — an awareness of and experience with the range of appropriate courses of action~~
17 ~~and remedies that can be invoked in aid of clients involved in such matters;~~

18 ~~(c) — a sound judgment in proposing solutions and approaches, so that proportion both~~
19 ~~as to expense and delay is maintained between the nature of the problem to be solved and the~~
20 ~~cost and elaborateness of the proposed response or solution; and~~

(d) ~~an attitude of professionalism in every aspect of the applicant's approach to clients, courts, or administrative bodies, and fellow practitioners.~~

RULE 6-22.2 DEFINITIONS

(a) **Antitrust Law.** "Antitrust law" ~~covers~~is the practice of law dealing with anticompetitive conduct or structure that may reduce consumer welfare in the United States. The primary federal antitrust laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act amendments to the Clayton Act, and the Federal Trade Commission Act. In addition, there are parallel state statutes. Generally, ~~the practices that the~~ antitrust laws are concerned with practices that involve, but are not limited to: price ~~fixes~~ fixing, limitations on production, division of markets, boycotts, conspiracies to monopolize, attempts to monopolize and monopolization, tying of products, covenants to restrain trade, exclusive dealing contracts, price discrimination, and other exclusionary, predatory, or economically discriminatory activities.

(b) **Trade Regulation Law.** "Trade regulation law" ~~covers the substantive areas~~is the practice of law dealing with fraudulent, deceptive, unfair, or unconscionable acts or practices, and unfair methods of competition under the Federal Trade Commission Act and Florida's Deceptive and Unfair Trade Practices Act, and state and federal laws regulating unfair competition, false advertising, privacy and information security, or similar statutes. This area of law includes enforcement and administrative actions by the Federal Trade Commission, the Florida Department of Legal Affairs, the Consumer Financial Protection Bureau and other federal or state agencies responsible for enforcing or monitoring consumer protection laws in the United States and Florida, in addition to private actions and class actions based on such laws and or similar statutes.

(c) **Practice of Law.** The "practice of law" for this area is defined as set forth in rule 6-3.5(c)(1).

(d) **Antitrust and Trade Regulation Law Certification Committee.** The antitrust and trade regulation law certification committee will consist of 7 members, including at least 2 members with substantial experience in antitrust law and at least 3 members with substantial experience in consumer protection law.

(e) **Non-Contested Matter.** "A non-contested matter" will be defined as a matter in which the applicant had significant responsibility and personal involvement in evaluating and rendering advice with respect to 1 or more antitrust law or trade regulation law issue that may or may not have involved an adversarial party and is not considered a contested matter as defined below.

~~(d)(f)~~ **Contested Matters.** A "Contested matters" shall~~will~~ be defined as a matters that were pending before an enforcement agency, ~~a tribunal, or a court~~ or other tribunal, (including an administrative law judge, or 1 or more arbitrators). ~~that were~~was adversarial and binding and in which the applicant had a significant responsibility and personal involvement. To qualify, and in ~~which~~ the applicant must have evaluated, handled, and resolved issues of fact and law in a dispute that involved antitrust or trade regulation law, either by reaching an adjudicated decision, or by achieving a settlement after the ~~of a matter after it~~ was the subject of substantial litigation in a court or other tribunal, or proceedings before an enforcement authority.

~~(e)(g)~~ **Adjudicated Decision.** ~~An "adjudicated decision" on significant issues of~~ For purposes of determining a contested matter in antitrust or trade regulation law an "adjudicated

64 decision” ~~shall~~will be defined as a decision resulting from a proceeding in which a court or other
65 tribunal rendered a decision:

66 (1) ~~a tribunal rendered a decision~~ on a motion for temporary or preliminary
67 injunction, or following an evidentiary hearing involving live testimony;

68 (2) ~~a tribunal rendered a decision~~ on a motion for summary judgment;

69 (3) ~~a tribunal rendered a decision~~ following briefing; or

70 (4) ~~a tribunal or jury rendered a decision~~ following a trial, or a court of appeals
71 rendered a decision following an appeal. A single proceeding may generate multiple adjudicated
72 decisions and an applicant ~~shall~~will receive credit for each such adjudicated decision as a
73 separate contested matter; however, for purposes of certification, the number of adjudicated
74 decisions from any single case within a 3-year period shall be limited to 2, absent extraordinary
75 circumstances.

76 **RULE 6-22.3 MINIMUM STANDARDS**

77 (a) **Substantial Involvement and Competence.** To become certified as an antitrust
78 and trade regulation lawyer, an applicant must demonstrate continuous and substantial
79 involvement and competence in ~~both~~ substantive antitrust and trade regulation principles ~~and~~
80 ~~deceptive, unfair, or unconscionable acts or practices~~ in multiple areas of commerce. Substantial
81 involvement and competence ~~shall~~will be demonstrated by:

82 (1) *Minimum Period of Practice.* The applicant must have actually practiced
83 law for 5 years immediately preceding the filing of the application for certification, during which

the applicant was involved in at least 8 matters (whether contested or non-contested) that substantially involved antitrust or trade regulation law.

(2) *Minimum Number of Contested Matters.* The applicant must have handled a minimum of 8 5 contested matters that involved representation of a client ~~beyond counseling~~ during the 10-years period immediately preceding application. All such matters must have substantially involved legal and factual issues, ~~and at least 50 percent 3 such of the matters must have involved federal antitrust law or and at least 1 must have involved state or federal trade regulation law.~~ In each of these 8 5 contested matters, the applicant ~~shall~~must have had senior level responsibility for all or a majority of the counseling, advice, and supervision of, ~~of or~~ involvement in: presentation of evidence, argument to the tribunal, and representation of the client. ~~For satisfaction in whole or in part of the requirement of 8 contested matters, For good cause shown, for satisfaction in whole or in part of the requirement of 5 matters in which the applicant had senior level responsibility, the antitrust and trade regulation law certification committee may consider the following: (a) verified substantial involvement in matters involving antitrust law or trade regulation law at a government agency, and (b) in lieu of 2 contested matters, an applicant may submit a certificate of satisfactory completion of a nationally recognized trial advocacy course of at least a week's duration, in which the applicant's performance was, in whole or in part, recorded visually and critiqued by experienced trial lawyers.~~

(3) *Protracted Matters.* For purposes of considering the threshold minimum requirements under (a)(1) and (2) above, ~~The~~ antitrust and trade regulation law certification committee ~~shall~~will consider involvement in protracted matters (whether contested or non-contested) as separate ~~such~~ matters on the following basis: every documented 300 hours of work

on antitrust or trade regulation issues in a ~~case-matter shall~~will be considered to be the equivalent of an additional matter for purposes of meeting the threshold of a minimum of 85 contested matters during the 10-years period immediately preceding application. ~~For good cause shown, for satisfaction in whole or in part of the requirement of 8 matters in which the applicant had senior level responsibility, the antitrust and trade regulation certification committee shall consider the following: (a) verified substantial involvement in matters involving antitrust law or trade regulation law at a government agency, and (b) in lieu of 2 contested matters, an applicant may submit a certificate of satisfactory completion of a nationally recognized trial advocacy course of at least a week's duration, in which the applicant's performance was, in whole or in part, recorded visually and critiqued by experienced trial lawyers.~~

———(3)(4) *Substantial Involvement- Antitrust.* To the extent the applicant emphasizes antitrust matters to establish substantial involvement, The the applicant shallmust have substantial involvement in matters (whether contested or non-contested) involving federal antitrust, or state ~~or federal trade regulation law~~ sufficient to demonstrate special competence as an antitrust and trade regulation lawyer. Substantial involvement may be evidenced by active participation in matters involving issues or antitrust law ~~or trade regulation law~~ including:

(A) ~~e~~Client interviewing or counseling;

(B) ~~p~~Preparation of advisory letters or opinion letters;

(C) ~~e~~Evaluating, ~~or~~ investigating, or drafting of business plans, policies, or agreements, or potential plans, policies, or agreements;

127 (D) ~~or~~ Evaluating, investigating, or responding to allegations of actual
128 or potential violations of such laws;

129 (E) ~~n~~ Negotiating with adversarial parties;

130 (F) ~~p~~ Preparing pleadings, motions, ~~and~~ memoranda, or briefs;

131 (G) ~~p~~ Participating in discovery;

132 (H) ~~t~~ Taking testimony; ~~briefing issues~~;

133 (I) ~~p~~ Presenting evidence;

134 (J) ~~n~~ Negotiating settlement(s) or drafting and preparing settlement
135 agreement(s); and/or ,

136 (K) ~~a~~ Arguing, trying, or appealing cases involving antitrust law or
137 trade regulation law.

138 (5) Substantial Involvement- Trade Regulation. To the extent the applicant
139 emphasizes trade regulation matters to establish substantial involvement, the applicant must have
140 substantial involvement in contested matters and adjudicated decisions involving state and
141 federal trade regulation, including consumer protection laws. In addition to the minimum
142 standard set forth elsewhere in these rules, the antitrust and trade regulation law certification
143 committee may consider any one or more of the following as evidence of substantial
144 involvement:

145 (A) 10 additional contested matters;

146 (B) The final resolution of two of more protracted matter class actions,
147 whether by class settlement or adjudication;

148 (C) Active participation in matters involving issues in consumer
149 protection law including:

150 (i) Client interviewing or counseling;

151 (ii) Preparation of advisory letters or opinion letters;

152 (iii) Evaluating, investigating, or drafting business plans,
153 policies or agreements, or potential plans, policies or agreements;

154 (iv) Negotiating with adversarial parties;

155 (v) Preparing pleadings, motions, memoranda, or briefs;

156 (vi) Participating in mediation;

157 (vii) Participating in discovery;

158 (viii) Taking testimony;

159 (ix) Presenting evidence;

160 (x) Negotiating settlement or drafting and preparing settlement
161 agreement(s); and/or

162 (xi) Arguing or appealing cases substantially involving
163 consumer protection law.

164 **(b) Peer Review.** The applicant ~~shall~~will select and submit names and addresses of
165 at least 5 lawyers or judges, who are neither relatives nor present or former associates or
166 partners, as references to attest to the applicant's substantial involvement in antitrust and trade
167 regulation law, as well as the applicant's character, ethics, and reputation for professionalism.
168 ~~Such~~These lawyers should be substantially involved in antitrust and trade regulation law and
169 familiar with the applicant's practice and, if they meet the foregoing criteria, may be general or in
170 house counsel of a client. In addition, the antitrust and trade regulation law certification
171 committee may, at its option, send reference forms to other attorneys, judges, or officers and
172 make such other investigation and verification as necessary.

173 **(c) Special Abilities.** In addition to the minimum standards set forth elsewhere in these
174 rules, the ~~The~~ applicants for antitrust and trade regulation law must be required to establish
175 special ability as a consequence of broad and varied experience including the following:

176 (1) a ready grasp of the substantive and procedural law bearing upon this area of
177 practice;

178 (2) an awareness of and experience with the range of appropriate courses of action
179 and remedies that can be invoked in aid of clients involved in such matters;

180 (3) a sound judgment in proposing solutions and approaches, so that proportion both
181 as to expense and delay is maintained between the nature of the problem to be solved and the
182 cost and elaborateness of the proposed response or solution; and

183 (4) an attitude of professionalism in every aspect of the applicant's approach to
184 clients, courts, or administrative bodies, and fellow practitioners.

185 **~~(e)~~(d)Education.** The applicant ~~shall~~must demonstrate completion of at least ~~50~~ 35
186 hours of approved continuing legal education in the field of antitrust and trade regulation law
187 within the 3-years period preceding the date of application. Accreditation of educational hours is
188 subject to policies established by the antitrust and trade regulation law certification committee or
189 the board of legal specialization and education.

190 **~~(d)~~(e)Examination.** The applicant must pass an examination applied uniformly to all
191 applicants to demonstrate sufficient knowledge, skills, and proficiency in antitrust and trade
192 regulation law to justify representation of special competence to the legal profession and to the
193 public. The award of an LL.M. degree from an approved law school in the area of antitrust or
194 trade regulation law, within 8 years of application, may substitute as the written examination
195 required by this subdivision. Any lawyer who is certified by The Florida Bar in business
196 litigation or civil trial law, and who meets the minimum standards of subdivisions (a)- ~~(e)~~(d) of
197 this rule, ~~shall~~will be exempted from the portion (if any) of the examination requirement of this
198 subdivision that deals with the litigation process as distinguished from substantive law.

199 **~~(e)~~(f)Exemption.** An applicant who has been substantially involved in antitrust and trade
200 regulation law for a minimum of 20 years, in accordance with the standards set forth in rules 6-
201 3.5(d) and ~~subdivision 6-22.3(a)(3)(4) and/or (a)(5) of this rule,~~ shall will be exempt from the
202 examination. ~~This exemption only shall be applicable to those applicants who apply within 4~~
203 ~~years of the effective date of the approval of this exemption and meet all other requirements for~~
204 ~~certification.~~

207 **RULE 6-22.4 RECERTIFICATION**

208 During the 5-year period immediately preceding application, an applicant must satisfy the
209 following requirements for recertification:

210 (a) **Substantial Involvement.** The applicant must show continuous and substantial
211 involvement in the field of antitrust and trade regulation law. The demonstration of substantial
212 involvement shall be made by showing that antitrust and trade regulation law comprises at least
213 30 percent of the applicant's practice, and that the applicant actively participated in matters
214 involving issues or antitrust law or trade regulation law including those activities set forth in
215 Rule 6-22.3(a)(4) and/or (a)(5). ~~client interviewing, counseling, evaluating, investigating,~~
216 ~~preparing pleadings, motions, and memoranda, participating in discovery, taking testimony,~~
217 ~~briefing issues, presenting evidence, negotiating settlement, drafting and preparing settlement~~
218 ~~agreements, and/or arguing, trying, or appealing cases involving antitrust or trade regulation law.~~

219 (b) **Minimum Number of Matters.** The applicant must have handled a minimum of
220 4 contested ~~antitrust or trade regulation~~ matters involving substantial legal or factual issues of
221 antitrust or trade regulation law (with at least 2 of these being antitrust). ~~All contested matters~~
222 ~~must have involved substantial legal or factual issues in the law of antitrust or trade regulation as~~
223 ~~determined by the certification committee.~~ On good cause shown, for satisfaction in part of the 4
224 antitrust or trade regulation matters, the antitrust and trade regulation law certification committee
225 may consider involvement in protracted matters on the same basis as set forth in rule 6-
226 22.3(a)(23).

227 (c) **Peer Review.** An applicant for recertification must submit the names and
228 addresses of at least 3 lawyers and 1 federal or state judge or administrative law judge before

whom the applicant has appeared as an advocate within the period since the last certification or recertification. Individuals used as references must not be relatives or present or former associates or partners of the applicant; shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in antitrust and trade regulation law, as well as the applicant's character, ethics, and reputation for professionalism; and, if a lawyer who meets they meet the foregoing criteria, may be general or other in house counsel at a client. ~~Lawyers who practiced law with the applicant during the recertification period and relatives may not be used as references.~~ The antitrust and trade regulation law certification committee may, at its option, send or authorize references to other attorneys, federal or state judges, or administrative law judges.

(d) Education. The applicant must demonstrate completion of at least 50 credit hours of approved continuing legal education for antitrust and trade regulation recertification, ~~in accordance with the standards set forth in rule 6-22.3 (e).~~ Accreditation of education hours is subject to policies established by the antitrust and trade regulation law certification committee or the board of legal specialization and education.

(e) Waiver of Compliance. The antitrust and trade regulation law certification committee may waive compliance with subdivisions (a)-(b) of this rule for:

(1) an applicant who has been continuously certified as an antitrust and trade regulation lawyer for a period of 14 years or more; or

(2) an applicant who, since the last certification or recertification, has become an officer of any judicial system (as defined in the Code of Judicial Conduct), including an officer such as a magistrate judge or administrative law judge, or who is a member of the Federal

251 Trade Commission (or a member of its staff), or an assistant attorney general in the Antitrust
252 Division of the Department of Justice (or a member of his or her staff), or an assistant attorney
253 general in the Antitrust Division of a state attorney general's office on a full-time basis during
254 the portion of the period since the last date of certification or recertification; or

255 (3) good cause shown.

256 **RULE 6-22.5 MANNER OF LISTING AREA OF CERTIFICATION**

257 A lawyer having received a certificate in antitrust and trade regulation law may list the
258 area in the manner set forth under rule 6-3.9(a) or the listing may be abridged to indicate that the
259 member is board certified in:

260 (1) antitrust and trade regulation law; or

261 (2) trade regulation and consumer protection law.