

## **CHAPTER 6. LEGAL SPECIALIZATION AND EDUCATION PROGRAMS**

### **6-1. GENERALLY**

#### **RULE 6-1.1 COMPOSITION OF BOARD**

The board of legal specialization and education shall be composed of 16 members of The Florida Bar appointed by the president of The Florida Bar, with the advice and consent of the board of governors. Fifteen of the members shall hold office for 3 years and until their successors are appointed. These 15 members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: 5 members shall serve until June 30 next following their appointment, 5 members shall serve until the second June 30 following their appointment, and 5 members shall serve until the third June 30 following their appointment. One of the members shall be designated by the president as chair. In addition, 1 member shall also be the chair of the continuing legal education committee of The Florida Bar, although no person may be chair of both the board of legal specialization and education and continuing legal education committee of The Florida Bar. Any vacancy shall be filled in the manner provided for original appointments.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272).

#### **RULE 6-1.2 PUBLIC NOTICE**

The Florida Bar may cause a public notice to be promulgated where and when it deems necessary, including, for example, telephone directory yellow pages, in substantially the following form:

##### **NOTICE**

##### **FOR THE GENERAL INFORMATION OF THE PUBLIC**

ATTORNEYS INDICATING "BOARD CERTIFIED," OR "SPECIALIST," OR "EXPERT" HAVE BEEN CERTIFIED BY THE FLORIDA BAR AS HAVING SPECIAL KNOWLEDGE, SKILLS, AND PROFICIENCY IN THEIR AREAS OF PRACTICE AND HAVE BEEN EVALUATED BY THE BAR AS TO THEIR CHARACTER, ETHICS, AND REPUTATION FOR PROFESSIONALISM IN THE PRACTICE OF LAW.

ALL PERSONS ARE URGED TO MAKE THEIR OWN INDEPENDENT INVESTIGATION AND EVALUATION OF ANY ATTORNEY BEING CONSIDERED.

This notice published by The Florida Bar Board of Legal Specialization and Education, Telephone 850/561-5600, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); address change, amended July 3, 2003; amended December 20, 2007, effective March 1, 2008 (SC06-736).

### **RULE 6-1.3 LIABILITY**

The Florida Bar shall assume no liability to any persons whomsoever by reason of the adoption and implementation of the designation or certification plans.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120).

### **RULE 6-1.4 AMENDMENT**

These rules may be amended in accordance with the procedures for amending the Rules Regulating The Florida Bar as provided in rule 1-12.1.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### **RULE 6-1.5 DISQUALIFICATION AS ATTORNEY DUE TO CONFLICT**

**(a) Members of the BLSE, Members of the Certification Committees, Members of the Board of Governors, and Employees of The Florida Bar.** No member of the BLSE, member of a certification committee, member of the board of governors, or employee of The Florida Bar shall represent a party other than The Florida Bar in certification proceedings authorized under these rules.

**(b) Former Members of the BLSE, Former Members of the Certification Committees, Former Board Members, and Former Employees.** No former member of the BLSE, former member of a certification committee, former member of the board of governors, or former employee of The Florida Bar shall represent any party other than The Florida Bar in certification proceedings authorized under these rules if personally involved to any degree in the matter while a member of the BLSE, certification committee, board of governors, or while an employee of The Florida Bar.

A former member of the BLSE, former member of a certification committee, former member of the board of governors, or former employee of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the attorney seeks to be a representative, and who did not serve in a supervisory capacity over such matter, shall not represent any party except The Florida Bar for 1 year after such service without the express consent of the board.

**(c) Partners, Associates, Employers, or Employees of the Firms of BLSE Members, Certification Committee Members, or Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar.** Members of the firms of board of governors members, BLSE members, or certification committee members shall not represent any party other than The Florida Bar in certification proceedings authorized under these rules without the express consent of the board.

**(d) Partners, Associates, Employers, or Employees of the Firms of Former BLSE Members, Former Certification Committee Members, or Former Board of Governors**

**Members Precluded From Representing Parties Other Than The Florida Bar.** Attorneys in the firms of former board of governors members, former BLSE members, or former certification committee members shall not represent any party other than The Florida Bar in certification proceedings authorized under these rules for 1 year after the former member's service without the express consent of the board.

Added May 20, 2004 (SC03-705), (875 So.2d 448).

## **6-2. FLORIDA DESIGNATION PLAN**

Subchapter 6-2 Sunsetting on June 30, 1996.

## **6-3. FLORIDA CERTIFICATION PLAN**

### **RULE 6-3.1 ADMINISTRATION**

The board of legal specialization and education shall have the authority and responsibility to administer the program for regulation of certification including:

(a) recommending to the board of governors areas in which certificates may be granted and providing procedures by which such areas may be determined, refined, or eliminated;

(b) recommending to the board of governors minimum, reasonable, and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates in areas of certification;

(c) providing procedures for the investigation and testing of the qualifications of applicants and certificate holders;

(d) awarding certificates to qualified applicants;

(e) encouraging law schools, the continuing legal education committee of The Florida Bar, voluntary bar associations, and other continuing legal education entities to develop and maintain a program of continuing legal education to meet the standards described by the plan;

(f) cooperating with other agencies of The Florida Bar in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of certification;

(g) cooperating with the standing committee on specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization;

(h) establishing policies, procedures, and appropriate fees to evaluate and accredit lawyer certifying organizations and programs;

(i) reporting as required, but at least annually, to the board of governors on the status and conditions of the plan;

(j) determining standards, rules, and regulations to implement these rules in accordance with the minimum standards prescribed by the Supreme Court of Florida; and

(k) delegating to The Florida Bar staff any of the administrative responsibilities of the board of legal specialization and education providing said board retains responsibility for staff decisions.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); May 20, 2004 (SC03-705), (875 So.2d 448).

### **RULE 6-3.2 CERTIFICATION COMMITTEES**

(a) **Initial Certification Committees.** For each certification area approved by the Supreme Court of Florida, a 9-member committee, bearing the name of the area, shall be appointed by the president of The Florida Bar, with the advice and consent of the board of governors. Initial committee appointees shall be eminent attorneys in each field, shall be members in good standing of The Florida Bar, shall have been admitted to The Florida Bar no less than 10 years, and must meet such other requirements as may in the future be promulgated by the board of legal specialization and education. Initial committee appointees shall be certified in the applicable area of practice by reason of appointment to that area's certification committee. The committee members shall hold office for 3 years and until their successors are appointed. The committee members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: 3 members shall serve until June 30 next following their appointment, 3 members shall serve until the second June 30 following their appointment, and 3 members shall serve until the third June 30 following their appointment.

(b) **Subsequent Certification Committees.** Subsequent certification committee appointees shall be appointed by the president-elect of The Florida Bar. must be certified in the area at the time of appointment, must be members in good standing of The Florida Bar, and must meet such other requirements as may be promulgated by the board of legal specialization and education. Upon the recommendation of the board of legal specialization and education and the approval of The Florida Bar Board of Governors, the composition of a certification committee may be adjusted to no fewer than 5 members or no more than 15 members. Committee members shall be appointed to staggered terms of office.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Feb. 8, 2001 (795 So.2d 1). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

### **RULE 6-3.3 JURISDICTION OF CERTIFICATION COMMITTEES**

Each certification committee shall be responsible for:

(a) proposing to the board of legal specialization and education criteria for the issuance or renewal of a certificate, which may include:

(1) experience;

- (2) references;
- (3) continuing legal education;
- (4) examination, either oral or written or both;
- (5) whether certificates may be issued without examination and on what basis; and
- (6) other relevant matters;

(b) reviewing applications for certificates;

(c) reviewing and establishing testing procedures as may be deemed necessary for certification or recertification; and

(d) recommending to the board of legal specialization and education that certificates be issued to those individuals meeting both the minimum standards imposed by this plan and the particular standards for the area for which certification is sought.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

#### **RULE 6-3.4 LIMITATIONS ON THE POWERS OF THE BOARD OF GOVERNORS, THE BOARD OF LEGAL SPECIALIZATION AND EDUCATION, AND THE CERTIFICATION COMMITTEES**

(a) **Limit on Right to Practice.** No standard shall be approved that shall, in any way, limit the right of a certificate holder to practice law in all areas.

(b) **Certification Not Required to Practice.** No lawyer shall be required to be certified before practicing law in any particular area.

(c) **Certification of Individuals Only.** All requirements for and all benefits to be derived from certification are individual and may not be fulfilled by or attributed to a law firm of which the certified lawyer may be a member.

(d) **Voluntary Nature of Plan.** Participation in the plan shall be on a voluntary basis.

(e) **Limit on Number of Certified Areas.** The limit on the number of areas in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirements of "substantial involvement" and such other standards as may be established by the board of legal specialization and education.

(f) **Rules Regulating The Florida Bar.** No rules or standards shall be adopted in contravention of these Rules Regulating The Florida Bar.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

## **RULE 6-3.5 STANDARDS FOR CERTIFICATION**

**(a) Standards for Certification.** The minimum standards for certification are prescribed below. Each area of certification established under this chapter may contain higher or additional standards if approved by the Supreme Court of Florida.

**(b) Eligibility for Application.** A member in good standing of The Florida Bar who is currently engaged in the practice of law and who meets the area's standards may apply for certification. From the date the application is filed to the date the certificate is issued, the applicant must continue to practice law and remain a member in good standing of The Florida Bar. The certificate issued by the board of legal specialization and education shall state that the lawyer is a "Board Certified (area of certification) Lawyer."

**(c) Minimum Requirements for Qualifying for Certification With Examination.** Minimum requirements for qualifying for certification by examination are as follows:

(1) A minimum of 5 years substantially engaged in the practice of law. The "practice of law" means legal work performed primarily for purposes of rendering legal advice or representation. Service as a judge of any court of record shall be deemed to constitute the practice of law. Employment by the government of the United States, any state (including subdivisions of the state such as counties or municipalities), or the District of Columbia, and employment by a public or private corporation or other business shall be deemed to constitute the practice of law if the individual was required as a condition of employment to be a member of the bar of any state or the District of Columbia. If otherwise permitted in the particular standards for the area in which certification is sought, the practice of law in a foreign nation state, U.S. territory, or U.S. protectorate, or employment in a position that requires as a condition of employment that the employee be licensed to practice law in such foreign nation state, U.S. territory, or U.S. protectorate, shall be counted as up to, but no more than, 3 of the 5 years required for certification.

(2) A satisfactory showing of substantial involvement in the particular area for which certification is sought during 3 of the last 5 years preceding the application for certification.

(3) A satisfactory showing of such continuing legal education in a particular field of law for which certification is sought as set by that area's standards but in no event less than 10 certification hours per year.

(4) Passing a written and/or oral examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in the area for which certification is sought and in the various areas relating to such field. The examination shall include professional responsibility and ethics. The award of an LL.M. degree from an approved law school in the area for which certification is sought within 8 years of application may substitute as the written examination required in this subdivision if the area's standards so provide.

(5) Current certification by an approved organization in the area for which certification is sought within 5 years of filing an application may, at the option of the certification committee, substitute as partial equivalent credit, including the written examination required

in subdivision (c)(4). Approval will be by the board of legal specialization and education following a positive or negative recommendation from the certification committee.

(6) Peer review shall be used to solicit information to assess competence in the specialty field, and professionalism and ethics in the practice of law. To qualify for board certification, an applicant must be recognized as having achieved a level of competence indicating special knowledge, skills, and proficiency in handling the usual matters in the specialty field. The applicant shall also be evaluated as to character, ethics, and reputation for professionalism. An applicant otherwise qualified may be denied certification on the basis of peer review. Certification may also be withheld pending the outcome of any disciplinary complaint or malpractice action.

As part of the peer review process, the board of legal specialization and education and its area committees shall review an applicant's professionalism, ethics, and disciplinary record. Such review shall include both disciplinary complaints and malpractice actions. The process may also include solicitation of public input and independent inquiry apart from written references. Peer review is mandatory for all applicants and may not be eliminated by equivalents.

**(d) Minimum Requirements for Qualification Without Examination.** When certification without examination is available in an area, the minimum requirements for such certification are as follows:

(1) a minimum of 20 years in the practice on a full-time basis.

(2) a satisfactory showing of competence and substantial involvement in the particular area for which certification is sought during 5 of the last 10 years, including the year immediately preceding the application for certification. Substantial involvement in the particular area of law for the 1 year immediately preceding the application may be waived for good cause shown.

(3) a satisfactory showing of such continuing legal education in a particular field of law for which certification is sought as set by that area's standards but in no event less than 15 hours per year.

(4) satisfactory peer review and professional ethics record in accordance with subdivision (c)(6); and

(5) payment of any fees required by the plan.

**(e) Certification Without Examination.** When certification without examination is available in an area, it may be granted only:

(1) to individuals who apply within 2 years after the date on which the particular area is approved by the Supreme Court of Florida; or

(2) as otherwise permitted in the particular standards for the area for which certification is sought.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

### **RULE 6-3.6 RECERTIFICATION**

**(a) Duration of Certification.** No certificate shall last for a period longer than 5 years.

**(b) Minimum Standards for Proficiency.** Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any certificate holder. The following minimum standards shall apply:

(1) A satisfactory showing of substantial involvement during the period of certification in the particular area for which certification was granted.

(2) A satisfactory showing of such continuing legal education in the area for which certification is granted but in no event less than 50 credit hours during the 5-year period of certification.

(3) Satisfactory peer review and professional ethics record in accordance with rule 6-3.5(c)(6).

(4) Any applicant for recertification who is not, at the time of application for recertification, a member in good standing of The Florida Bar or any other bar or jurisdiction in which the applicant is admitted, as a result of discipline, disbarment, suspension, or resignation in lieu thereof, shall be denied recertification. The fact of a pending disciplinary complaint or malpractice action against an applicant for recertification shall not be the sole basis to deny recertification.

(5) The payment of any fees prescribed by the plan.

**(c) Failure to Meet Standards for Recertification; Lapse of Certificate.** Any applicant for recertification who has either failed to meet the standards for recertification or has allowed the certificate to lapse must meet all the requirements for initial certification as set out in the area's standards.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

### **RULE 6-3.7 OPEN/VACANT**

Added effective Feb. 8, 2001 (795 So.2d 1); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (164 So.3d 1217), case no. SC14-2107.



## **RULE 6-3.8 REVOCATION OF CERTIFICATION**

A certificate may be revoked by the board of legal specialization and education without hearing or advance notice for the following reasons:

- (a) Termination of Area.** If the program for certification in an area is terminated;
- (b) Discipline.** Disciplinary action is taken against a member pursuant to the Rules Regulating The Florida Bar;
- (c) Criminal Action.** When a member is found guilty, regardless of whether adjudication is imposed or withheld, of any crime involving dishonesty or a felony; or
- (d) Miscellaneous.** When it is determined, after hearing on appropriate notice, that:
  - (1) the certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the certification committee or the board of legal specialization and education;
  - (2) the certificate holder failed to abide by all rules and regulations governing the program promulgated by the board of governors or the board of legal specialization and education as amended from time to time, including any requirement or safeguard for continued proficiency;
  - (3) the certificate holder failed to pay any fee established by the plan;
  - (4) the certificate holder no longer meets the qualifications established by the plan or the board of legal specialization and education; or
  - (5) the certificate holder engaged in misconduct that is inconsistent with the demonstration of special knowledge, skills, proficiency, or ethical conduct and professionalism.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206).

## **RULE 6-3.9 MANNER OF CERTIFICATION**

**(a) Listing Area of Certification.** A member having received a certificate in an area may list the area on the member's letterhead, business cards, and office door, in the yellow pages of the telephone directory, in approved law lists, and by such other means permitted by the Rules of Professional Conduct. The listing may be made by stating one or more of the following: "Board Certified (area of certification) Lawyer;" "Specialist in (area of certification);" or use of initials "B.C.S.," to indicate Board Certified Specialist. If the initials "B.C.S." are used, the area(s) in which the member is board certified must be identified; if used in court documents or a non-advertising context, the initials may stand alone.

**(b) Members of Law Firms.** No law firm may list an area of certification for the firm, but membership in the firm does not impair an individual's eligibility to list areas of certification in accordance with this chapter. Except for the firm listing in the telephone directory, a law firm may show next to the names of any firm members their certification area(s).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

### **RULE 6-3.10 RIGHT OF APPEAL**

A lawyer who is refused certification or recertification, or whose certificate is revoked by the board of legal specialization and education, or any person who is aggrieved by a ruling or determination of that board shall have the right to appeal the ruling to the board of governors under such rules and regulations as it may prescribe. Exhaustion of this right of appeal shall be a condition precedent to judicial review by the Supreme Court of Florida. Such review shall be by petition for review in accordance with the procedures set forth in rule 9.100, Florida Rules of Appellate Procedure.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); May 20, 2004 - amended (SC03-705).

### **RULE 6-3.11 FEES**

**(a) Application Filing Fee.** This fee is for the filing and review of an individual's certification or recertification application. This fee is not refundable.

**(b) Examination/Certification Fee.** This fee must be paid before taking the examination for certification or before an applicant who otherwise qualifies receives a certificate. This fee is not refundable.

**(c) Annual Fee.** This fee is assessed against each plan participant required to file an annual audit for a particular year. Collection of the fee coincides with the distribution of annual audit forms.

**(d) Recertification Extension Fee.** This fee is for extending the filing date of an application for recertification. This fee is not refundable.

**(e) Challenge/Petition Filing Fee.** This fee must accompany the filing of a challenge of an application denial or a petition for grade review. This fee is not refundable.

**(f) Appeal Filing Fee.** This fee must accompany the filing of an appeal. This fee is not refundable.

**(g) Course Evaluation Fee.** This fee is assessed against course sponsors that seek continuing legal education credit hours required under the plan. This fee is not refundable.

**(h) Individual Credit Approval Fee.** This fee is assessed against applicants or plan participants to cover administrative costs of processing a credit request where a sponsor has not sought course approval under the plan.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended effective Feb. 8, 2001 (795 So.2d 1). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

### **RULE 6-3.12 CONFIDENTIALITY**

All matters including but not limited to applications, references, tests and test scores, files, reports, investigations, hearings, findings, and recommendations shall be confidential so far as consistent with the effective administration of this plan, fairness to the applicant, and due process of law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

### **RULE 6-3.13 AMENDMENTS**

Standards for individual areas of certification may be amended by the board of governors consistent with the notice and publication requirements set forth in rule 1-12.1.

Adopted July 1, 1993 (621 So.2d 1032). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

## **6-4. STANDARDS FOR BOARD CERTIFICATION IN CIVIL TRIAL LAW**

### **RULE 6-4.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified Civil in Trial Law." The purpose of the standards is to identify lawyers who practice civil trial law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in civil trial law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120). Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-4.2 DEFINITIONS**

**(a) Civil Trial Law.** "Civil trial law" is the practice of law dealing with litigation of civil controversies in all areas of substantive law before Florida circuit courts or equivalent courts of other states and federal district courts. In addition to the pretrial and trial process, "civil trial law" includes evaluating, handling, and resolving civil controversies prior to the initiation of suit.

**(b) Trial.** A "trial" is the actual commencement of in-court or in-chambers adversarial proceedings before the trier of fact at which testimony was taken that includes at least 2 components of a trial as defined below.

**(c) Lead Counsel.** Service as lead counsel is defined as having conducted a minimum of 50 percent of the in-court proceedings.

**(d) Jury Trial.** A jury trial is a case in which the jury has been sworn and testimony has been taken prior to concluding or settling a matter.

**(e) Components of a Trial.** The components of a trial applicable under this rule are:

- (1) voir dire questioning;
- (2) opening statement;
- (3) direct examination;
- (4) cross examination; and
- (5) closing statement.

**(f) Day in Trial.** A "day in trial" is a minimum of 6 hours.

**(g) Binding.** "Binding" means that the parties are required to honor the court's decision unless and until the decision is overturned pursuant to law.

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

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended and effective May 20, 2016 by the Florida Bar Board of Governors.

### **RULE 6-4.3 MINIMUM STANDARDS**

The applicant must demonstrate the following on a form approved by the committee:

**(a) Substantial Involvement and Competence.** The applicant must demonstrate continuous and substantial involvement and competence in civil trial law in accordance with the following standards.

**(b) Minimum Period of Practice.** The applicant must have practiced law for at least 5 years of which at least 50 percent was spent actively participating in civil trial law. At least 3 years of this practice must have been immediately preceding the filing of the application or, during those 3 years, the applicant may have served as a judge of a court of general jurisdiction adjudicating civil trial matters.

**(c) Minimum Number of Trials.** The applicant must have handled and been substantially involved in the oral presentation of at least 15 contested civil trials, each involving substantial legal or factual issues, in courts of general jurisdiction. A jury trial of 6 or more trial days may be submitted for consideration as 2 trials only if the applicant personally completed at least 3 of 5 components of trial. A jury trial of 16 or more trial days may be submitted for consideration as 3 trials only if the applicant personally completed at least 3 of 5 components of trial.

**(d) Minimum Trial Requirements.** Of these 15 trials:

- (1) 5 must have been jury trials;
- (2) 5 must have been conducted by the applicant as lead counsel;
- (3) 5 must have been submitted to the trier of fact on some or all of the issues; and
- (4) 4 trials, including 2 jury trials and 2 trials conducted by the applicant as lead counsel, must have been tried during the 5 year period immediately preceding filing the application.

**(e) Non-qualifying Proceedings.** The following matters or proceedings do not qualify as trials under this rule:

- (1) mortgage foreclosures tried in less than 1 day;
- (2) bankruptcy;
- (3) family law;
- (4) criminal law;
- (5) workers' compensation;
- (6) mediations and arbitrations;
- (7) administrative hearings under Chapter 120, Florida Statutes; and
- (8) summary judgments, evidentiary hearings, preliminary injunctions, and appellate proceedings.

**(f) Substitutions.**

(1) If an applicant is unable to submit 15 trials, 3 substitutions may be submitted. Acceptable substitutions include:

(A) Evidentiary hearings, injunctions, or adversarial proceedings that are binding on the parties, involved the taking of testimony and submission of evidence, and lasted at least 1 trial day, provided they involved substantial legal and factual issues as determined by the civil trial certification committee; or

(B) Completion of an advanced trial advocacy seminar, approved by the civil trial certification committee, either through teaching or attendance, that includes active participation by the applicant in simulated courtroom proceedings, which may count as no more than 1 jury or non-jury trial per application.

**(g) Substantial Involvement and Competence Defined.** Within the 3-year period immediately preceding the filing of the application, the applicant must have substantial involvement in contested civil matters sufficient to demonstrate special competence in civil trial law. Substantial involvement and competence includes:

- (1) active participation in the litigation process, including the investigation and evaluation of civil disputes;
- (2) involvement in the pretrial processes such as preparation of pleadings, discovery, and motion practice;
- (3) planning and review of strategy and tactics for trial;
- (4) participation in the process of mediation and settlement; and
- (5) taking of testimony, presentation of evidence, and argument of jury or nonjury trials.

For good cause shown, the civil trial certification committee may waive 2 of the 3 years' substantial involvement for individuals who have served as judges of courts of general jurisdiction adjudicating civil trial matters. The year immediately preceding filing the application will not be waived.

**(h) Peer Review.** The applicant must submit the names and addresses of 6 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's special competence and substantial involvement in civil trial law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. Individuals submitted as references must be substantially involved in civil trial law and familiar with the applicant's practice. At least 1 must be a judge of a court of general jurisdiction in the state of Florida before whom the applicant has appeared as an advocate in the 2 years immediately preceding filing the application. In addition, the board of legal specialization and education and the civil trial certification committee may, send peer review forms to other lawyers and judges. Peer review received on behalf of the applicant must be sufficient to demonstrate the applicant's competence, ethics, and professionalism in civil trial law.

**(i) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in civil trial law during the 3-year period immediately preceding the application date. Accreditation of educational hours is subject to policies established by the civil trial certification committee or the board of legal specialization and education.

**(j) Examination.** The applicant must pass an examination administered uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in civil trial law to justify the representation of special competence to the legal profession and the public.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; amended January 9-10, 1997, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended June 3, 2005 by the Board of Governors; amended and effective May 20, 2016 by The Florida Bar Board of Governors.

## **RULE 6-4.4 RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must satisfy the following requirements for recertification:

**(a) Substantial Involvement and Competence.** The applicant must demonstrate continuous and substantial involvement and competence in the practice of law, of which 50 percent has been spent in active participation in civil trial law throughout the period since the last date of certification in accordance with the standards in this subchapter. The applicant must describe all courtroom experience, if any, during the period since the previous certification including motion practice, summary judgment, and injunction hearings, arbitration proceedings or any other court appearances involving the presentation of evidence and argument in an adversarial environment.

**(b) Minimum Number of Trials.** The applicant must have handled:

(1) 2 contested civil trials in courts of general jurisdiction, of which at least 1 was a jury case conducted by the applicant as lead counsel, 1 of which may be an evidentiary hearing or preliminary injunction; or

(2) 1 jury trial as lead counsel lasting a minimum of 6 or more trial days.

**(c) Non-qualifying Proceedings.** Proceedings listed as non-qualifying under the minimum standards for certification under this subchapter do not qualify as trials for recertification, except as provided above.

**(d) Trial Substitution.** If the applicant has not participated as lead counsel in a jury trial, the applicant may substitute completion of an advanced trial advocacy seminar, either through teaching or attendance. The advanced trial advocacy seminar must be approved by the civil trial certification committee and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings. No more than 1 substitution for jury or non-jury trial may be made per application. Other acceptable substitutions must comply with the standards set forth in this subchapter.

**(e) Peer Review.** The applicant must submit the names and addresses of 3 lawyers, 1 of whom is currently board certified in civil trial law, and 1 judge of a court of general jurisdiction before whom the applicant has appeared as an advocate within the 2 year period preceding application. Individuals submitted as references must be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in civil trial law, as well as the applicant's character, ethics, and reputation for professionalism, since the last date of certification. The names of lawyers who currently practice in the applicant's law firm may not be submitted as references. The board of legal specialization and education and the civil trial

certification committee may, at its option, send reference forms to other lawyers and judges or authorize reference forms from other lawyers and judges. Peer review received on behalf of the applicant must be sufficient to demonstrate the applicant's competence, ethics, and professionalism in civil trial law.

**(f) Education.** The applicant must demonstrate completion of 50 hours of approved continuing legal education since the date of the last application for certification. Accreditation of educational hours is subject to policies established by the civil trial law certification committee or the board of legal specialization and education.

**(g) Waiver of Compliance.**

(1) On special application, for good cause shown, the civil trial certification committee may waive compliance with the substantial involvement criteria for an applicant who has complied with all other requirements of this rule.

(2) On special application, for good cause shown, the civil trial certification committee may waive compliance with any portion of the trial education, and peer review criteria for an applicant who is an officer of any judicial system (as defined in the Code of Judicial Conduct), including an officer such as a bankruptcy judge, special master, court commissioner, or magistrate, performing judicial functions on a full-time basis during any portion of the period since the last date of certification.

(3) On special application, for good cause shown, the civil trial certification committee may waive compliance with the trial criteria for an applicant who has been continuously certified as a civil trial lawyer for a period of 14 years or more.

(4) On special application, for good cause shown, the civil trial certification committee may waive compliance with the substantial involvement criteria for an applicant, otherwise qualified, who is substantially serving as a mediator, referee, master or magistrate and is actively involved in civil trial law. For purposes of this subsection only, the judicial peer review as required in this subchapter does not need to be a judge before whom the applicant has appeared as advocate within the 2 year period preceding application.

(5) On special application, for good cause shown, the civil trial certification committee may waive compliance with any portion of the trial and substantial involvement criteria for an applicant otherwise qualified who is not able to meet the requirements for recertification for health reasons.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Sept. 30-Oct. 1, 1993, by the Board of Governors of The Florida Bar; amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; amended May 16-18, 1996, by the Board of Governors of The Florida Bar; amended Jan. 9-10, 1997, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended June 3, 2005 by the Board of Governors; amended and effective May 20, 2016 by the Florida Bar Board of Governors.



## **6-5. STANDARDS FOR BOARD CERTIFICATION IN TAX LAW**

### **RULE 6-5.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Tax Law." The purpose of the standards is to identify those lawyers who practice in the area of taxation and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in tax law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120). Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-5.2 DEFINITIONS**

**(a) Tax Law.** "Tax law" means legal issues involving federal, state, or local income, estate, gift, ad valorem, excise, or other taxes.

**(b) Practice of Law.** The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### **RULE 6-5.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

(1) The years of practice of law need not be consecutive.

(2) Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M. degree in taxation (or such other related fields approved by the board of legal specialization and education and the tax certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

**(b) Substantial Involvement.** Every applicant must demonstrate substantial involvement in the practice of tax law during the 3 years immediately preceding the date of application. Upon an applicant's request and the recommendation of the tax certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement is defined as at least 500 hours per year in the practice of law in which an applicant has had substantial and direct participation in legal matters involving significant issues of tax law. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on tax law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the tax certification committee but written or oral supplementation may be required.

**(c) Peer Review.** Every applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for involvement in the field of tax law in accordance with rule 6-3.5(c)(6), as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education or the tax certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the tax certification committee may also make such additional inquiries as they deem appropriate.

**(d) Education.** Every applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in tax law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 90 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to tax law. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in "tax law" at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the tax certification committee; or

(6) such other methods as may be approved by the board of legal specialization and education and the tax certification committee.

The board of legal specialization and education or the tax certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed paragraphs. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

**(e) Examination.** Every applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of tax law to justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Dec. 7-8, 1993, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar.

#### **RULE 6-5.4 RECERTIFICATION**

To be eligible for recertification, an applicant must meet the following requirements:

**(a) Substantial Involvement.** A satisfactory showing, as determined by the board of legal specialization and education and the tax certification committee, of continuous and substantial involvement in the field of tax law throughout the period since the last date of certification. Demonstration of substantial involvement shall be in accordance with rule 6-5.3(b), except that the board of legal specialization and education and/or the tax certification committee may accept an affidavit from the applicant which attests to the applicant's proficiency in tax law consistent with the purpose of the substantial involvement requirement.

**(b) Education.** Demonstration that the applicant has completed at least 125 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified tax lawyers. If the applicant has not attained 125 hours of continuing legal education, but has attained more than 60 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

**(c) Peer Review.** Completion of the reference requirements set forth in rule 6-5.3(c).

**(d) Examination.** If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the tax certification committee determine that the applicant may not meet the standards in tax law established under this chapter, the board of legal specialization and education and the tax certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended effective June 29, 2000, by the Board of Governors of The Florida Bar.

## **6-6. STANDARDS FOR BOARD CERTIFICATION IN MARITAL AND FAMILY LAW**

### **RULE 6-6.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Marital and Family Law." The purpose of the standards is to identify those lawyers who practice marital and family law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified marital and family lawyers. The standards also contain provisions to allow judicial officers who regularly preside over marital and family law cases to achieve board certification in marital and family law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 11, 1999, by the Board of Governors of The Florida Bar.; Amended December 12, 2008 by the Board of Governors, effective December 12, 2008.

### **RULE 6-6.2 DEFINITIONS**

**(a) Marital and Family Law.** "Marital and family law" is the practice of law dealing with legal problems arising from the family relationship of husband and wife and parent and child, including civil controversies arising from those relationships. In addition to actual pretrial and trial process, "marital and family law" includes evaluating, handling, and resolving such controversies prior to and during the institution of suit and postjudgment proceedings. The practice of marital and family law in the state of Florida is generally unique in that decisional, statutory, and procedural laws are specific to this state.

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

**(c) Judicial Officers.** "Judicial officers" shall include judges, general magistrates, special magistrates, child support hearing officers, and private triers of fact appointed by court order.

**(d) Trial.** A "trial" is defined as a matter submitted to and decided by the trier of fact for ultimate resolution by the court's rendition of a judgment or order on at least 1 issue aside from the dissolution of the parties' marriage. Further, the applicant must have, incident thereto, presided over as a judicial officer, or conducted as an advocate, at least 1 direct and 1 cross examination of at least 2 different witnesses, with the introduction into evidence of at least 1 exhibit. The applicant must have been responsible for all, or a majority of, the presentation of evidence and/or representation of the client if the matter was handled as an advocate.

**(e) Substantial Involvement.** "Substantial involvement" is defined as active participation in client interviewing, counseling, investigating, preparation of pleadings, participation in discovery beyond mandatory disclosure, taking of testimony, presentation of evidence, attendance at hearings, negotiations of settlement, attendance at mediation, drafting and

preparation of marital settlement agreements, and argument and trial of marital and family law cases. Substantial involvement also includes active participation in the appeal of marital and family law cases.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

### **RULE 6-6.3 MINIMUM STANDARDS FOR LAWYER APPLICANTS**

**(a) Minimum Period of Practice.** The applicant must have at least 5 years of the actual practice of law immediately preceding application, of which at least 50 percent has been spent in active participation in marital and family law.

**(b) Minimum Number of Cases.** The applicant must demonstrate in the application trial experience and substantial involvement as set forth in subdivisions (1) and (2) below, in a minimum of 25 contested marital and family law cases in circuit courts during the 5-year period immediately preceding the date of application. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage. In each of these 25 cases the applicant shall have been responsible for all or a majority of the presentation of evidence and representation of the client.

(1) At least 7 of the 25 cases must have been trials as defined in rule 6-6.2(d). An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as 1 of the 7 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 18 contested marital and family law cases sufficient to demonstrate special competence as a marital and family lawyer. Any trials in excess of the 7 trials meeting the criteria of subdivision (b)(1) of this rule shall automatically qualify as substantial involvement cases.

(3) The determination of whether the applicant has sufficiently demonstrated substantial involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

**(c) Peer Review.**

(1) The applicant shall submit names and addresses of 6 lawyers, who are neither current nor former associates or partners of the applicant within the 5-year period immediately preceding the date of application, as references to attest to the applicant's substantial competence and active involvement in the practice of marital and family law as well as the applicant's character, ethics, and reputation for professionalism. At least 3 of the lawyers shall be members of The Florida Bar, with their principal office located in the state of Florida. Such lawyers need not be Florida Bar board certified in marital and family law,

however, they should be substantially involved in marital and family law and familiar with the applicant's practice. In addition, all lawyer references must have participated with the applicant, during the 5-year period immediately preceding the date of application, as either opposing or co-counsel in a marital and family law or juvenile dependency proceeding, involving some combination of discovery beyond mandatory disclosure, settlement negotiations, evidentiary hearings in excess of 3 hours, trials, and/or alternative dispute resolution mechanism such as collaborative law, mediation or arbitration. This requirement is to ensure meaningful comment on the applicant's most recent special knowledge, skills, proficiency, character, and reputation for professionalism in the practice of marital and family law, including the consideration of the needs of children and the family unit affected by the applicant's representation.

(2) The applicant shall submit the names and addresses of 3 judicial officers who have presided in circuit courts in the state of Florida and before whom the applicant has appeared as an advocate in a trial or an evidentiary hearing of at least 3 hours in length for a marital and family law and/or juvenile dependency case during the 5-year period immediately preceding the date of application.

(3) The marital and family law certification committee may, at its option, send reference forms to other attorneys and judicial officers, and make such other investigation as necessary to ensure that the applicant's special knowledge, skills, proficiency, character, and reputation for professionalism in the practice of marital and family law, including the consideration of the needs of children and the family, are befitting board certification in marital and family law.

**(d) Education.** The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in the field of marital and family law during the 5-year period immediately preceding the date of application. At least 5 of the 75 credit hours must be in ethics, dispute resolution, collaborative law and/or mental health continuing legal education. Accreditation of educational hours is subject to policies established by the marital and family law certification committee or the board of legal specialization and education and may include such activity as:

- (1) teaching a course in marital and family law;
- (2) completion of a course in marital and family law;
- (3) participation as a panelist or speaker in a symposium or similar program in marital and family law;
- (4) attendance at a lecture series or similar program concerning marital and family law, sponsored by a qualified educational institution or bar group;
- (5) authorship of a book or article on marital and family law, published in a professional publication or journal; and
- (6) such other educational experience as the marital and family law certification committee or the board of legal specialization and education shall approve.

**(e) Examination.** The applicant must pass an examination applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, experience, and professionalism in marital and family law to justify the representation of special competence to the legal profession and the public.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

## **RULE 6-6.4 MINIMUM STANDARDS FOR JUDICIAL OFFICERS**

An applicant who has served as a judicial officer within the 5-year period immediately preceding the date of application may be eligible for board certification if the applicant complies with each of the following standards:

**(a) Minimum Period of Practice or Judicial Service.** The applicant must have devoted at least 50 percent of the applicant's practice or judicial labor to marital and family law cases during the 5-year period immediately preceding the date of application.

**(b) Minimum Number of Cases.** The applicant must demonstrate in the application trial experience and substantial involvement, as set forth in subdivisions (1) and (2) below, as a judicial officer who presided over, or who handled as an advocate, a minimum of 25 contested marital and family law cases in circuit courts during the 5-year period immediately preceding the date of application. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage.

(1) At least 7 of the 25 cases must have been trials as defined in rule 6-6.2(d). The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the trial requirements for certification. At a minimum, in each of the 7 cases, the applicant must have presided over a contested evidentiary trial where at least 1 direct and 1 cross examination of at least 2 different witnesses was conducted and at least 1 piece of evidence was introduced as an exhibit. If the applicant handled the cases as an advocate, the applicant must have been responsible for all or a majority of the presentation of evidence and/or representation of the client. An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as 1 of the 7 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 18 contested marital and family law cases sufficient to demonstrate special competence in marital and family law. Any trials in excess of the 7 trials meeting the criteria of subdivision (b)(1) shall automatically qualify as substantial involvement cases.

(3) The determination of whether the applicant has sufficiently demonstrated substantial involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek

additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

**(c) Peer Review.** The applicant shall submit names and addresses of 6 lawyers, who are neither current nor former associates or partners of the applicant within the 5-year period immediately preceding the date of application, as references to attest to the applicant's substantial competence and active involvement in marital and family law, as well as the applicant's character, ethics, and reputation for professionalism. At least 5 of the lawyers shall be members of The Florida Bar, with their principal office located in the state of Florida. Such lawyers need not be Florida Bar board certified in marital and family law, however, they should be substantially involved in marital and family law and familiar with the applicant's judicial service. This requirement is to ensure meaningful comment on the applicant's special knowledge, skills, proficiency, character, and reputation for professionalism in marital and family law, including the consideration of the needs of children and the family unit affected by the applicant's judicial service. Judicial references shall not be required.

**(d) Education.** The applicant shall comply with rule 6-6.3(d).

**(e) Examination.** The applicant must pass the examination required by rule 6-6.3(e).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

### **RULE 6-6.5 RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

**(a) Minimum Period of Practice and/or Judicial Service.** The applicant must have devoted at least 30 percent of the applicant's practice or judicial labor to marital and family law cases.

**(b) Minimum Number of Cases.** The applicant must demonstrate in the application trial experience and substantial involvement by handling as an advocate, or presiding over as a judicial officer, a minimum of 15 contested marital and family law cases in circuit courts. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage.

(1) At least 5 of the 15 cases must have been trials as defined in rule 6-6.2(d). The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the trial requirements for recertification. An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as one of the 5 trials.



(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 10 contested marital and family law cases sufficient to demonstrate special competence as a marital and family lawyer or as a judicial officer presiding over marital and family law cases. Any trials in excess of the 5 trials meeting the criteria of subdivision (a)(1) shall automatically qualify as substantial involvement cases. The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the substantial involvement requirements for recertification.

(3) The determination of whether the applicant has sufficiently demonstrated involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(4) On special application, for good cause shown, the marital and family law certification committee may waive compliance with rule 6-6.5(b)(1) and/or (2) for an applicant who has been continuously certified in marital and family law for a period of 14 years or more or who has demonstrated in the application an extraordinary contribution, as determined by the marital and family law certification committee after review, inquiry, and consideration thereof, to the field of marital and family law in Florida. The applicant shall be required to complete all sections of the application for recertification with the exception of schedule B-1.

**(c) Education.** The applicant must have completed at least 75 hours of approved continuing legal education in accordance with rule 6-6.3(d).

**(d) Peer Review.** The applicant must submit references and otherwise comply with rule 6-6.3(c) or 6-6.4(c). Judicial peer review is not required for judicial officers seeking recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; Feb. 11, 1999, by the Board of Governors of The Florida Bar.

## **6-7. STANDARDS FOR BOARD CERTIFICATION IN WILLS, TRUSTS, AND ESTATES LAW**

### **RULE 6-7.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Wills, Trusts, and Estates Law." The purpose of the standards is to identify those lawyers who practice in the area of wills, trusts, and estates and have demonstrated special knowledge, skills, and proficiency to be properly identified to the public as board certified in wills, trusts, and estates law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 1, 1993 (621 So.2d 1032). Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-7.2 DEFINITIONS**

**(a) Wills, Trusts, and Estates.** "Wills, trusts, and estates" is the practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the preparation of legal instruments to effectuate estate plans; administering estates, including tax related matters, both federal and state; and probate litigation.

**(b) Practice of Law.** The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for any purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law. Service as a judge of any court of record shall be deemed to constitute the practice of law. Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant's activity is spent as a teacher of wills, trusts, and estates subjects in an accredited law school.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

### **RULE 6-7.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M. degree in taxation or estate planning and probate (or such other related fields approved by the board and wills, trusts, and estates certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision; provided, however, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

**(b) Substantial Involvement.** Every applicant must demonstrate substantial involvement in the practice of law in estate planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, probate and trust law, estates and trust litigation, and homestead law during the 5 years immediately preceding the date of application, including devoting not less than 40 percent of practice to estate planning, planning for incapacity,

administration of estates and trusts, fiduciary and transfer taxation, probate and trust law, estates and trust litigation, and homestead law in this state during each of the 2 years immediately preceding application. Service as a judge in the probate division of the circuit court of this state during 6 months or more of a calendar year shall satisfy a year of substantial involvement. Except for the 2 years immediately preceding application, upon an applicant's request and the recommendation of the wills, trusts, and estates certification committee, the board of legal specialization and education may waive the requirement that the 5 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Except for the 2 years immediately preceding application, receipt of an LL.M. degree in estate planning and probate (or such other degree containing substantial estate planning and probate content as approved by the board of legal specialization and education) from an approved law school may substitute for 1 year of substantial involvement. An applicant must furnish information concerning the frequency of work and the nature of the issues involved. For the purposes of this section the "practice of law" shall be as defined in rule 6-3.5(c)(1) except that it shall also include time devoted to lecturing and/or authoring books or articles on wills, trusts, and estates if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the wills, trusts, and estates certification committee, but written or oral supplementation may be required.

**(c) Peer Review.** Every applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for professional competence and substantial involvement in the field of wills, trusts, and estates. The board of legal specialization and education and the wills, trusts, and estates certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the wills, trusts, and estates certification committee may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

**(d) Education.** Every applicant must demonstrate that, during the 3-year period immediately preceding the date of the application, the applicant has met the continuing legal education requirements in wills, trusts, and estates as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 90 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to wills, trusts, and estates. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;
- (2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;
- (3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in estates and trusts, fiduciary administration, fiduciary and transfer taxation, and homestead law at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education and the wills, trusts, and estates certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; and

(6) such other methods as may be approved by the board of legal specialization and education and the wills, trusts, and estates certification committee.

The board of legal specialization and education and the wills, trusts, and estates certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

**(e) Examination.** The applicant must pass an examination that will be practical and comprehensive and designed to demonstrate special knowledge, skills, and proficiency in estate planning, postmortem planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, substantive and procedural aspects of probate and trust law, estates and trust litigation, homestead law, joint tenancies, tenancies by the entirety, conflicts of interest, and other ethical considerations. Such examination shall justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

## **RULE 6-7.4 RECERTIFICATION**

**(a) Eligibility.** Recertification must be obtained every 5 years. To be eligible for recertification, an applicant must meet the following requirements:

(1) A satisfactory showing, as determined by the board of legal specialization and education and the wills, trusts, and estates certification committee, of continuous and substantial involvement in wills, trusts, and estates law throughout the period since the last date of certification. The demonstration of substantial involvement of more than 40 percent during each year after certification or prior recertification shall be made in accordance with the standards set forth in rule 6-7.3(b).

(2) Completion of at least 125 hours of approved continuing legal education since the filing of the last application for certification. This requirement shall be satisfied by the applicant's participation in continuing legal education approved by The Florida Bar pursuant to rule 6-7.3(d)(1) through (6).

(3) Submission of the names and addresses of 3 individuals who are active in wills, trusts, and estates, including but not limited to lawyers, trust officers, certified public accountants, and judges who are familiar with the applicant's practice, excluding persons who are currently employed by or practice in the applicant's law firm, who can attest to the applicant's reputation for professional competence and substantial involvement in the field of wills, trusts, and estates law during the period since the last date of certification. The board of legal specialization and education or the wills, trusts, and estates certification committee may solicit references from persons other than those whose names are submitted by the applicant in such cases as they deem appropriate. The board of legal specialization and education or the wills, trusts, and estates certification committee may also make such additional inquiries as it deems appropriate.

**(b) Denial of Recertification.** The board of legal specialization and education may deny recertification based upon any information received from the peer review or from any individual referenced in subdivision (a)(3), above.

**(c) Examination Requirement.** If, after reviewing the material submitted by an applicant for recertification and the peer review, the wills, trusts, and estates certification committee determines the applicant may not meet the standards for wills, trusts, and estates certification established under this chapter, the wills, trusts, and estates certification committee may require, as a condition of recertification, that the applicant pass the examination given by the wills, trusts, and estates certification committee to new applicants.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

## **6-8. STANDARDS FOR BOARD CERTIFICATION IN CRIMINAL LAW**

### **RULE 6-8.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as either "Board Certified in Criminal Trial Law" or "Board Certified in Criminal Appellate Law." An applicant may qualify for certification under both categories provided the applicant meets the standards for each category. The purpose of the standards is to identify those lawyers who practice criminal law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in criminal trial or appellate law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 11, 1999; August 17, 2007. by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-8.2 DEFINITIONS AND COMMITTEE**

**(a) Criminal Law.** "Criminal law" is the practice of law dealing with the defense and prosecution of misdemeanor and felony crimes in state and federal trial and appellate courts.

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

**(c) Criminal Law Certification Committee.** At least 2 members of the "criminal law certification committee" shall be certified in criminal appellate law. At least 5 members shall be certified criminal trial law.

**(d) Trial.** A "trial" shall be defined as substantially preparing a case for court, offering testimony or evidence (or cross-examination of witness[es]) in an adversarial proceeding before a trier of fact, and submission of a case to the trier of fact for determination of the ultimate fact of guilt or innocence.

A trial conducted under the Jimmy Ryce Act, section 394.911, et seq., Florida Statutes, may count toward the trial requirement for initial certification or recertification. However, no more than 60 percent of the total trial requirement for criminal trial law certification or recertification may be based on Jimmy Ryce trials.

**(e) Protracted Litigation.** "Protracted litigation" shall be defined as litigation that proceeds on a long-term basis involving unusual and complicated legal or factual matters, extensive discovery, court hearings or trial, and by its very nature is so time consuming it precludes the applicant from meeting the numerical requirement.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

### **RULE 6-8.3 CRIMINAL TRIAL; MINIMUM STANDARDS**

**(a) Substantial Involvement and Competence.** To become certified as a criminal trial lawyer, an applicant must demonstrate substantial involvement and competence in criminal trial law. Substantial involvement and competence shall include the following:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in criminal trial law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge of a court of general jurisdiction adjudicating criminal trial matters.

(2) The trial of a minimum of 25 criminal cases. Of these 25 cases, at least 20 shall have been jury trials, tried to verdict, and at least 15 shall have involved felony charges; and at least 10 shall have been conducted by the applicant as lead counsel. At least 5 of the 25 cases shall have been tried during the 5 years immediately preceding application. On good cause shown, for satisfaction in part of the 25 criminal trials, the criminal law certification committee may consider involvement in protracted litigation as defined in rule 6-8.2(e).

(3) Submission of a criminal trial court memorandum or brief prepared and filed by the applicant within the 3 year period immediately preceding application. Such document shall be substantial in nature, state facts and argue various aspects of criminal law. The quality of

this memorandum or brief will be considered in determining whether an applicant is qualified for certification.

(4) Within the 3 years immediately preceding application, the applicant's substantial involvement must be sufficient to demonstrate special competence as a criminal trial lawyer. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or non-jury cases. For good cause shown, the criminal law certification committee may waive 2 of the 3 years of substantial involvement for individuals who have served as judges. In no event may the year immediately preceding application be waived.

**(b) Peer Review.**

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal trial matters within the last 2 years, or before whom the applicant has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal trial law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

**(c) Education.** The applicant shall demonstrate that during the 3-year period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for criminal trial certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours is subject to policies established by the criminal law certification committee or the board of legal specialization and education.

**(d) Examination.** Every applicant must pass an examination designed to demonstrate sufficient knowledge, skills, proficiency, and experience in criminal trial law, application of constitutional principles, and rules of criminal procedure to justify the representation of special competence to the legal profession and the public.

Amended June 18, 1987, effective July 1, 1987 (508 So.2d 1236); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); amended April 14-15, 1994, by the Board of Governors of The Florida Bar; Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

## RULE 6-8.4 CRIMINAL TRIAL RECERTIFICATION

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

**(a) Substantial Involvement.** The applicant shall demonstrate substantial involvement in the practice of law, of which at least 30 percent must have been spent in active participation in criminal trial law. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or non-jury cases.

**(b) Criminal Trials.** Either as an advocate or as a judge, an applicant shall have completed the trial of a minimum of 5 criminal cases. Of these 5 cases, at least 4 shall have been jury trials and at least 3 shall have involved felony charges. On good cause shown, for satisfaction in part of the 5 criminal trials, the criminal law certification committee may consider, in its discretion, involvement in protracted litigation as defined in rule 6-8.3(a)(2)(e) or other such criteria as the committee may deem appropriate.

The proceedings that may serve as a trial for recertification purposes include, but are not limited to cases where the:

(1) result is “dismissal of charges” by the court upon a motion for judgment of acquittal at the close of the prosecution’s case or thereafter;

(2) result is a “mistrial” or “plea.” The case may be counted as a trial at the discretion of the committee provided the applicant offers sufficient information demonstrating substantial courtroom activity;

(3) case is a “violation of probation” or a proceeding involving post-conviction relief. The case may be counted as the 1 non-jury trial of the 5 trials for recertification if the applicant offers sufficient information demonstrating substantial courtroom activity;

(4) case is a “court martial” before a judge; however, discharge boards shall be considered non-jury;

**(c) Education.** The applicant shall demonstrate completion of at least 50 credit hours of approved continuing legal education for criminal trial law certification, in accordance with rule 6-8.3(c).

**(d) Peer Review.**

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal trial matters within the last 2 years, or before



whom the applicant has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

**(e) Waiver of Compliance.** On special application, for good cause shown, the criminal law certification committee may waive compliance with the trial criteria for an applicant who has been continuously certified as a criminal trial lawyer for a period of 14 years or more, provided the applicant:

(1) satisfies the peer review and education required in subdivisions (c) and (d) of this rule; and,

(2) demonstrates substantial involvement in criminal trial law defined, for purposes of this subdivision, as active participation in the litigation process, including the investigation and evaluation of criminal charges, involvement in pretrial processes such as discovery and motion practice, and the review of strategy and tactics for trial. The applicant shall describe the extent of substantial involvement, including courtroom and trial experience, since the last date of recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

## **RULE 6-8.5 CRIMINAL APPELLATE; MINIMUM STANDARDS**

**(a) Substantial Involvement and Competence.** To become certified as a criminal appellate lawyer, an applicant must demonstrate substantial involvement and competence in criminal appellate law. Substantial involvement and competence shall include:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in criminal appellate law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge. The 5 years of criminal appellate practice shall include brief writing, motion practice, oral arguments, and extraordinary writs sufficient to demonstrate special competence as a criminal appellate lawyer.

(2) The representation of at least 25 criminal appellate actions. On good cause shown, for satisfaction in part of the 25 criminal appellate actions, the criminal law certification committee may consider involvement in protracted litigation as defined in subdivision 6-8.2(e). If any of the applicant's appellate actions occurred when the applicant was a judicial clerk/staff attorney and the rules of court prevent the applicant from enumerating those appellate actions, then the applicant shall obtain, from the applicant's judge, a letter stating

the number of appellate actions in which the applicant participated while employed by the judge.

(3) Submission of 1 copy of the pleadings filed in 2 recent criminal appellate proceedings:

(4) Within the 3 years immediately preceding application, the applicant's substantial involvement must be sufficient to demonstrate special competence as a criminal appellate lawyer. Substantial involvement includes brief writing, motion practice, oral arguments, and extraordinary writs. For good cause shown, the criminal law certification committee may waive 2 of the 3 years' substantial involvement for individuals who have served as judges. In no event may the year immediately preceding application be waived.

**(b) Peer Review.**

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal appellate law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal appellate matters within the last 2 years, to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

**(c) Education.** The applicant shall demonstrate that during the 3-year-period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for criminal appellate certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours is subject to policies established by the criminal law certification committee or the board of legal specialization and education.

**(d) Examination.** Every applicant must pass an examination designed to demonstrate sufficient knowledge, skills, proficiency, and experience in criminal appellate law, application of constitutional principles, and rules of criminal and appellate procedure to justify the representation of special competence to the legal profession and the public.

Amended June 18, 1987, effective July 1, 1987 (508 So.2d 1236); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

## **RULE 6-8.6 CRIMINAL APPELLATE RECERTIFICATION**

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

**(a) Substantial Involvement.** The applicant shall demonstrate substantial involvement in the practice of law, of which at least 30 percent must have been spent in active participation in criminal appellate law. Substantial involvement includes brief writing, motion practice, oral arguments, and extraordinary writs sufficient to demonstrate special competence as a criminal appellate lawyer.

**(b) Appellate Actions.** Either as an advocate or as a judge, an applicant shall have completed at least 10 criminal appellate actions. On good cause shown, for satisfaction in part of the 10 appellate actions, the criminal law certification committee may consider involvement in protracted litigation as defined in subdivision 6-8.2(e). If any of the applicant's criminal appellate actions occurred when the applicant was a judicial clerk/staff attorney and the rules of court prevent the applicant from enumerating those appellate actions, then the applicant shall obtain, from the applicant's judge, a letter stating the number of criminal appellate actions in which the applicant participated while employed by the judge.

**(c) Education.** The applicant shall demonstrate completion of at least 50 credit hours of approved continuing legal education for criminal appellate law certification, in accordance with rule 6-8.5(c).

**(d) Peer Review.**

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references, to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal appellate law and familiar with the applicant's practice

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal appellate matters within the last 2 years, to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

**(e) Waiver of Compliance.** On special application, for good cause shown, the criminal law certification committee may waive compliance with the appellate action criteria for an applicant who has been continuously certified as a criminal appellate lawyer for a period of 14 years or more, provided the applicant:

(1) satisfies the peer review and education required in subdivisions (c) and (d) of this rule; and,

(2) demonstrates substantial involvement in criminal appellate law defined, for purposes of this subdivision, as active participation in the appellate process, including the investigation and evaluation of criminal appeals, and the review of strategy and tactics for appeals. The applicant shall describe the extent of substantial involvement, including briefs written and oral arguments attended, since the last date of recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

## **6-9. STANDARDS FOR BOARD CERTIFICATION IN REAL ESTATE LAW**

### **RULE 6-9.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Real Estate Law." The purpose of the standards is to identify those lawyers who practice Florida real estate law and have the special knowledge, skills, and proficiency as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in real estate law. The practice of Florida real estate law is unique to the State of Florida because of the unique history, geographic features of the state, and the evolution of its constitutional, statutory, and decisional law. Accordingly, the standards require that lawyers seeking certification demonstrate a degree of practical knowledge and experience in Florida real estate law and transactions.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); amended January 30, 2004 by the Board of Governors; amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-9.2 DEFINITIONS**

**(a) Real Estate.** "Real estate" is the practice of law, regardless of jurisdiction, dealing with matters relating to ownership and rights in real property including, but not limited to, the examination of titles, real estate conveyances and other transfers, leases, sales and other transactions involving real estate, condominiums, cooperatives, property owners associations and planned developments, interval ownership, zoning and land use planning regulation, real estate development and financing, real estate litigation, and the determination of property rights.

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

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Nov. 21, 1997, by the Board of Governors of the Florida Bar; Amendment approved by the Board of Governors of The Florida Bar on January 30, 2004; Board of Governors approved amendment on January 30, 2004.

## **RULE 6-9.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years, 3 of which meet the requirements of 6-9.3(b) as of the date of filing an application. The years of law practice need not be consecutive.

**(b) Substantial Involvement.** Every applicant must demonstrate substantial involvement sufficient to show special knowledge, skills, and proficiency in the practice of real estate law during the 3 years immediately preceding the date of application. Substantial involvement is defined as including devoting at least 40 percent of one's practice to matters in which issues of real estate law are significant factors and in which the applicant had substantial and direct participation in those real estate issues. The applicant must also demonstrate that the applicant's real estate practice includes experience and involvement with Florida real estate law and transactions. Upon an applicant's request and the recommendation of the real estate certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision, the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on fields of real estate law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the real estate certification committee, but written or oral supplementation may be required.

**(c) Peer Review.** Every applicant shall submit the names and addresses of 5 attorneys or judges, at least 3 of whom are licensed to practice law in Florida and are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for involvement in Florida real estate law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the real estate certification committee shall alternatively authorize references from persons, including non-Florida lawyers and judges and persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the real estate certification committee may also make such additional inquiries as they deem appropriate.

**(d) Education.** Every applicant must demonstrate that during the 3-year period immediately preceding the date of filing an application, the applicant has accumulated 45 hours of continuing legal education approved for credit in real estate law by the board of legal specialization and education. The board of legal specialization and education or the real estate law certification committee shall establish policies applicable to this rule.

**(e) Examination.** The applicant must pass a written examination that is practical, objective, and designed to demonstrate special knowledge, skills, and proficiency in real estate law to justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended January 30, 2004 by the Board of Governors of The Florida Bar.

## **RULE 6-9.4 RECERTIFICATION**

To be eligible for recertification, an applicant must meet the following requirements:

**(a) Substantial Involvement.** The applicant must make a satisfactory showing, as determined by the board of legal specialization and education and the real estate certification committee, of involvement in real estate law throughout the period since the last date of certification. The demonstration of substantial involvement of at least 40 percent during each year after certification prior to recertification shall be made in accordance with the standards set forth in rule 6-9.3(b).

**(b) Continuing Legal Education Requirement.** The applicant must show completion of at least 75 hours of accredited continuing legal education approved for credit in real estate law by the board of legal specialization and education since the filing of the last application for certification.

**(c) Reference Requirement.** An applicant for recertification shall submit the names and addresses of 5 attorneys or judges, at least 3 of whom are licensed to practice law in Florida and are familiar with the applicant's practice, not including lawyers who currently practice in the applicant's law firm, who can attest to the applicant's reputation for ability of practice and involvement in Florida real estate law as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the real estate certification committee may also make such additional inquiries as they deem appropriate.

Amended effective Oct. 29, 1987 (515 So.2d 977); amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended January 30, 2004 by the Board of Governors of The Florida Bar. Due to recent amendments to rule 6-9.3, the BLSE removed the sentence, "The maximum number of hours for those educational activities set forth in rule 6-9.3(d)(2)-(6) shall also apply for recertification." from subdivision (b) of rule 6-9.4.

## **6-10. CONTINUING LEGAL EDUCATION REQUIREMENT RULE**

### **RULE 6-10.1 CONTINUING LEGAL EDUCATION REQUIREMENT**

**(a) Preamble.** It is of primary importance to the public and to the members of The Florida Bar that attorneys continue their legal education throughout the period of their active practice of law. To accomplish that objective, each member of The Florida Bar (hereinafter referred to as "member") shall meet certain minimum requirements for continuing legal education.

**(b) Reporting Requirement.** Each member except those exempt under rule 6-10.3(c)(4) and (5) shall report compliance with continuing legal education requirements in the manner set forth in the policies adopted for administration of this plan.

(c) **Fees.** The board of governors of The Florida Bar may require a reasonable fee to be paid to The Florida Bar in connection with each member's report concerning compliance with continuing legal education requirements.

(d) **Rules.** The board of legal specialization and education of The Florida Bar shall adopt policies necessary to implement continuing legal education requirements subject to the approval of the board of governors.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

## **RULE 6-10.2 ADMINISTRATION**

(a) **Board of Legal Specialization and Education.** The board of legal specialization and education shall administer the continuing legal education requirements as herein provided. Any member affected by an adverse decision of the board of legal specialization and education may appeal as provided in rule 6-10.5.

(b) **Delegation of Authority.** The board of legal specialization and education may delegate to the staff of The Florida Bar any responsibility set forth herein, except that of granting a waiver or exemption from continuing legal education requirements.

(c) **Scope of Board of Legal Specialization and Education Activities.** The board of legal specialization and education shall cooperate with and answer inquiries from staff pertaining to continuing legal education requirements and make recommendations to the board of governors concerning continuing legal education requirements, including but not limited to:

- (1) approved education courses;
- (2) approved alternative education methods;
- (3) number of hours' credit to be allowed for various education efforts;
- (4) established educational standards for satisfaction and completion of approved courses;
- (5) additional areas of education and/or practice approved for credit under continuing legal education requirements;
- (6) modification or expansion of continuing legal education requirements;
- (7) adoption of additional standards or regulations pertaining to continuing legal education requirements;
- (8) amount of reporting or delinquency fees; and
- (9) general administration of continuing legal education requirements.

**(d) Maintenance of Records.** The Florida Bar shall maintain a record of each member's compliance with continuing legal education requirements.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### **RULE 6-10.3 MINIMUM CONTINUING LEGAL EDUCATION STANDARDS**

**(a) Applicability.** Every member except those exempt under subdivision (c) of this rule must comply and report compliance with the continuing legal education requirement. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of this rule. Members described in subdivisions (c)(4) through (c)(6) of this rule are automatically exempt from compliance and reporting of continuing legal education.

**(b) Minimum Hourly Continuing Legal Education Requirements.** Each member must complete a minimum of 33 credit hours of approved continuing legal education activity every 3 years. Five of the 33 credit hours must be in approved legal ethics, professionalism, bias elimination, substance abuse, or mental illness awareness programs and 3 of the 33 credit hours must be in approved technology programs, which are included in, not in addition to, the regular 33 credit hour requirement. If a member completes more than 33 credit hours during any reporting cycle, the excess credits cannot be carried over to the next reporting cycle.

**(c) Exemptions.** Eligibility for an exemption, in accordance with policies adopted under this rule, is available for:

- (1) active military service;
- (2) undue hardship;
- (3) nonresident members not delivering legal services or advice on matters or issues governed by Florida law;
- (4) members of the full-time federal judiciary who are prohibited from engaging in the private practice of law;
- (5) justices of the Supreme Court of Florida and judges of the district courts of appeal, circuit courts, and county courts, and other judicial officers and employees as designated by the Supreme Court of Florida; and,
- (6) inactive members of The Florida Bar.

**(d) Course Approval.** Course approval is set forth in policies adopted pursuant to this rule. Special policies will be adopted for courses sponsored by governmental agencies for employee attorneys that exempt these courses from any course approval fee and may exempt these courses from other requirements as determined by the board of legal specialization and education.



**(e) Accreditation of Hours.** Accreditation standards are set forth in the policies adopted under this rule. Any course presented, sponsored or approved for credit by an organized integrated or voluntary state bar is deemed an approved course for purposes of this rule if the course meets the criteria for accreditation established by policies adopted under this rule.

**(f) Full-time Government Employees.** Credit hours will be given full-time government employees for courses presented by governmental agencies. Application for credit approval may be submitted by the full-time government attorney before or after attendance, without charge.

**(g) Skills Training Preadmission.** The board of legal specialization and education may approve for CLER credit a basic skills or entry level training program developed and presented by a governmental entity. Credit earned through attendance at an approved course developed and presented by a governmental entity is applicable under subdivision (b) of this rule if taken within 12 months prior to admission to The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended March 30, 1989, effective March 31, 1989 (541 So.2d 110); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); Feb. 8, 2001 (795 So.2d 1); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); September 29, 2016, effective January 1, 2017 (SC16-574), 200 So.3d 1225.

#### **RULE 6-10.4 REPORTING REQUIREMENTS**

**(a) Reports Required.** Each member except those exempt under rule 6-10.3(c)(4) and (5) shall file a report showing compliance or noncompliance with the continuing legal education requirement. Such report shall be in the form prescribed by the board of legal specialization and education.

**(b) Time for Filing.** The report shall be filed with The Florida Bar no later than the last day of such member's applicable reporting period as assigned by The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

#### **RULE 6-10.5 DELINQUENCY AND APPEAL**

**(a) Delinquency.** If a member fails to complete and report the minimum required continuing legal education hours by the end of the applicable reporting period, the member shall be deemed delinquent in accordance with rule 1-3.6, Rules Regulating The Florida Bar.

**(b) Appeal to the Board of Governors.** A member deemed delinquent may appeal to the Board of Governors of The Florida Bar. Appeals to the board of governors shall be governed by the policies promulgated under these rules.

**(c) Appeal to the Supreme Court of Florida.** A decision of the board of governors may be appealed by the affected member to the Supreme Court of Florida. Such review shall be by

petition for review in accordance with the procedures set forth in rule 9.100, Florida Rules of Appellate Procedure.

**(d) Exhaustion of Remedies.** A member must exhaust each of the remedies provided under these rules in the order enumerated before proceeding to the next remedy.

**(e) Tolling Time for Compliance.** An appeal shall toll the time a member has for showing compliance with continuing legal education requirements.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

### **RULE 6-10.6 REINSTATEMENT**

A member deemed delinquent for failure to meet the continuing legal education requirement may be reinstated in accordance with rule 1-3.7, Rules Regulating The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 15, 1990 (556 So.2d 1119); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

### **RULE 6-10.7 CONFIDENTIALITY**

Unless directed otherwise by the Supreme Court of Florida, the files, records, and proceedings of the board of legal specialization and education, as they relate to or arise out of any failure of a member to satisfy the continuing legal education requirements, shall be deemed confidential and shall not be disclosed, except in the furtherance of the duties of the board of legal specialization and education or upon request of the member, in writing, or as they may be introduced in the evidence or otherwise produced in proceedings under these rules. Nothing herein shall be construed to prohibit The Florida Bar from advising that a member has been suspended from the active practice of law for failure to meet continuing legal education requirements.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### **RULE 6-10.8 DISCIPLINARY ACTION**

The board of legal specialization and education may refer misrepresentation of a material fact concerning compliance with or exemption from continuing legal education requirements for disciplinary proceedings under chapter 3 or chapter 4 of the Rules Regulating The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120).

**6-11. STANDARDS FOR BOARD CERTIFICATION IN WORKERS' COMPENSATION  
LAW  
RULE 6-11.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a "Board Certified in Workers' Compensation Law." The purpose of the standards is to identify those lawyers who practice workers' compensation law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in workers' compensation law.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amendment approved by the Board of Governors on August 22, 2003; amended October 21, 2011 by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

**RULE 6-11.2 DEFINITIONS**

**(a) Workers' Compensation.** "Workers' compensation" is the practice of law involving the analysis and litigation of problems or controversies arising out of the Florida Workers' Compensation Law (chapter 440, Florida Statutes).

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

**(c) Trial.** "Trial" shall be defined as the process of having carried a client's burden of going forward in either the prosecution or defense of a claim for any substantive benefit (including entitlement to an attorney's fee). Pretrial, settlement, lump sum, and motion hearings (including motions to be relieved of costs) shall not be considered trials. Substantial participation in a rule nisi petition and hearing for the enforcement of a workers' compensation order is a "trial" under this subsection, but no more than two such hearings may be used. Attorney fee hearings, on the sole issue of the quantum fees, cannot be considered as a contested workers' compensation case. Cases involving a merits hearing, with a later attorney fee hearing on the question of entitlement to an attorney's fee on the same merit issues, can count as only 1 case. Hearings and/or trials outside the jurisdiction of the Florida Office of the Judges of Compensation Claims, and appeals of these matters (including, but not limited to, federal workers' compensation matters, Federal Longshore and Harbor Workers' Compensation Act matters, and other circuit court actions, etc.) cannot be used to meet the trial or protracted litigation.

**(d) Protracted Litigation.** "Protracted litigation" shall be defined as litigation that involves unusual or complicated legal issues and extensive discovery, yet does not result in submission of the ultimate issue to the trier of fact, or substantial presentation in the appeal of workers' compensation cases.

**(e) Substantial Equivalent.** "Substantial equivalent" includes preparation and publication of legal articles, or the presentation of lectures and seminars, and the trial and submission to the

trier of fact of any workers' compensation issues before any judge other than a Judge of Compensation Claims (JCC). In addition, an applicant can only substitute up to 3 workers' compensation mediations, where the applicant acted as mediator, to count as 1 "substantial equivalent." The applicant may substitute up to 3 substantial equivalents (i.e., 9 mediations acting as mediator) in this manner. What is or is not substantial a substantial equivalent and is within the sole discretion of the workers' compensation certification committee, but may not substitute for more than 5 of the required trials of workers' compensation cases.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended by Board of Governors August 22, 2003; amended October 21, 2011 by the Board of Governors of The Florida Bar.

### **RULE 6-11.3 MINIMUM STANDARDS**

**(a) Substantial Involvement.** To become certified as a workers' compensation lawyer, a lawyer must demonstrate substantial involvement in workers' compensation law. Substantial involvement shall include the following:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in workers' compensation law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge of compensation claims adjudicating workers' compensation matters.

(2) The trial of a minimum of 25 contested workers' compensation cases. All such cases must have involved substantial legal or factual issues. In each of these 25 cases the applicant shall have been responsible for all or a majority of the presentation of evidence and representation of the client. As partial satisfaction of the requirement of 25 contested workers' compensation cases, the workers' compensation certification committee may substitute for "trials" their "substantial equivalent," appeals, or cases involving protracted litigation of contested workers' compensation cases involving substantial legal or factual issues. Successful completion of a trial advocacy seminar, approved by the committee, that includes as a part of its curriculum active participation by the applicant in simulated courtroom proceedings may substitute as 1 contested workers' compensation case. The total number of cases that may be substituted for the minimum of 25 contested cases including cases of "substantial equivalent," appeals and cases of "protracted litigation" shall not exceed a total of 10, of which the cases of "protracted litigation" and/or appeals shall not exceed a total of 5 cases, and cases of "substantial equivalent" shall not exceed a total of 5 cases.

(3) Within the 3 years immediately preceding application, the applicant shall have substantial involvement in contested workers' compensation cases sufficient to demonstrate special competence as a workers' compensation lawyer. Substantial involvement includes investigation, evaluation, pleadings, discovery, taking of testimony, presentation of evidence and argument, and trial of workers' compensation cases. Substantial involvement also includes active participation in the appeal of workers' compensation cases. For good cause

shown, the workers' compensation certification committee may waive up to 2 of the 3 years' substantial involvement for individuals who have served as judges of compensation claims adjudicating workers' compensation matters.

**(b) Peer Review.** The applicant shall select and submit names and addresses of 5 lawyers, not associates or partners, as references to attest to the applicant's special competence and substantial involvement in workers' compensation practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers themselves shall be involved in workers' compensation law and shall be familiar with the applicant's practice. No less than 1 shall be a judge of compensation claims before whom the applicant has appeared as an advocate in the trial of a workers' compensation case in the 2 years immediately preceding the application. In addition, the workers' compensation certification committee may, at its option, send reference forms to other attorneys and judges of compensation claims.

**(c) Education.** The applicant shall make a satisfactory showing that, within the 3 years immediately preceding application, the applicant has accumulated at least 45 hours of approved continuing legal education in the field of workers' compensation law.

**(d) Examination.** The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in workers' compensation law to justify the representation of special competence to the legal profession and the public.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 28-29, 1994, by the Board of Governors of The Florida Bar; amended Jan. 26, 1996, by the Board of Governors of The Florida Bar; amended Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended October 21, 2011 by the Board of Governors of The Florida Bar.

#### **RULE 6-11.4 JUDGES OF COMPENSATION CLAIMS**

An applicant who is serving as a judge of compensation claims and applies for recertification while serving as a judge of compensation claims shall be deemed to have met the requirements of rule 6-11.5.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar.

#### **RULE 6-11.5 RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must meet the following requirements for recertification:

**(a) Substantial Involvement.** The applicant shall demonstrate continuous and substantial involvement in the practice of law, of which 30 percent has been spent in active participation in

workers' compensation law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-11.3(a)(3).

**(b) Trial Requirement.** The applicant must have completed trial of a minimum of 15 contested workers' compensation cases, or the substantial equivalent, since the filing of the last application for certification. All such cases must have involved substantial legal or factual issues. For good cause shown, as partial satisfaction for the requirement of 15 contested workers' compensation cases, the workers' compensation certification committee may substitute for "trials" their "substantial equivalent" or 5 cases involving appeals and/or protracted litigation of contested workers' compensation cases involving substantial legal or factual issues. The total number of cases that may be substituted for the minimum 15 contested cases, including cases of "substantial equivalent," appeals and cases of "protracted litigation," is a total of 10 cases, of which the total number of cases of "protracted litigation" and/or appeals, shall not exceed a total of 8 cases and cases of "substantial equivalent" shall not exceed a total of 5 cases. An attorney fee hearing, on the sole issue of the quantum fees, cannot be considered as a contested workers' compensation case. A case involving a merits hearing, with a later attorney fee hearing on the question of entitlement to an attorney's fee on the same merit issues, can count as only 1 case.

**(c) Peer Review.** The applicant shall submit references as set forth in rule 6-11.3(b). The references submitted must be able to attest to the applicant's special competence and substantial involvement in workers' compensation practice, as well as the applicant's character, ethics, and professionalism, throughout the period since the last date of certification.

**(d) Education.** The applicant shall report completion of at least 75 hours of approved continuing legal education in workers' compensation law since the filing of the last application for certification.

**(e) Waiver.** On special application, for good cause shown, the workers' compensation certification committee may waive compliance with the 15 contested workers' compensation cases requirement for an applicant who has been continuously certified as a workers' compensation lawyer for a period of 14 years or more.

Added June 18, 1987 effective, July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (543 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended July 28-29, 1994, by the Board of Governors of The Florida Bar; amended Jan. 26, 1996, by the Board of Governors of The Florida Bar; amended Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended \_\_\_\_\_, \_\_\_\_\_, by the Board of Governors of The Florida Bar; Amendments approved by the Board of Governors on August 22, 2003; amended October 21, 2011 by the Board of Governors of The Florida Bar.

## **6-12. BASIC SKILLS COURSE REQUIREMENT RULE**

### **RULE 6-12.1 BASIC SKILLS COURSE REQUIREMENT**

**(a) Preamble.** It is of primary importance to the public and to the members of The Florida Bar that attorneys begin their legal careers with a thorough and practical understanding of the law. To accomplish that objective, each member of The Florida Bar (hereinafter referred to as "member") shall comply with the basic skills course requirement (hereinafter BSCR) through the

completion of continuing legal education programs developed and presented by the Young Lawyers Division of The Florida Bar (hereinafter YLD). Oversight of member compliance with this rule shall be the responsibility of the board of legal specialization and education (hereinafter BLSE.)

**(b) Applicability.** Every member admitted to The Florida Bar after October 1, 1988 shall comply with the BSCR.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258); Feb. 8, 2001 (795 So.2d 1).

### **RULE 6-12.2 ADMINISTRATION**

**(a) Responsibility.** The YLD shall be responsible for the planning, content, and presentation of programs for BSCR compliance. The YLD shall also establish minimum quality standards for the Practicing with Professionalism program, to include instruction on discipline, ethics, professionalism, and responsibility to the public. The BLSE shall oversee member compliance with BSCR and adopt policies necessary for implementation. Such policies shall be subject to approval by the board of governors.

**(b) Delegation of Authority.** The BLSE may delegate to the staff of The Florida Bar any responsibility set forth herein, except that of denying a waiver or exemption from BSCR.

**(c) Waiver.** On special application and for good cause shown, the BLSE may adjust the time for completion, may waive compliance, or accept a substitute program, for either component of BSCR.

**(d) Maintenance of Records.** The Florida Bar shall maintain a record of each member's compliance with BSCR.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258); Feb. 8, 2001 (795 So.2d 1).

### **RULE 6-12.3 REQUIREMENT**

**(a) Course Components.** Compliance with BSCR includes:

(1) completion of a Practicing with Professionalism program sponsored by the YLD;  
and

(2) completion of 3 elective, basic, substantive continuing legal education programs sponsored by the YLD.

**(b) Time for Completion.** BSCR must be completed as follows:

(1) the Practicing with Professionalism program must be completed no sooner than 12 months prior to or no later than 12 months following admission to The Florida Bar; and

(2) the 3 elective, basic, substantive continuing legal education programs must be completed during the member's initial 3-year continuing legal education requirement reporting cycle assigned on admission to The Florida Bar.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 15, 1990 (556 So.2d 1119); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 8, 2001 (795 So.2d 1); May 12, 2005, effective May 12, 2005 (SC04-914); February 4, 2010, effective March 6, 2010 (SC09-1427). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

## **RULE 6-12.4 DEFERMENT AND EXEMPTION**

### **(a) Deferment of Practicing with Professionalism Requirement.**

(1) *Deferment Eligibility.* A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(1), if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member elects inactive membership status in The Florida Bar; or

(E) the member is a full-time government employee who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination, as long as the member continuously remains in government practice.

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(1) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) attend the Practicing with Professionalism program within 12 months of deferment expiration.

### **(b) Deferment of Basic Level YLD Courses.**

(1) *Deferment Eligibility.* A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(2) if:

(A) the member is on active military duty;



(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member is a full-time governmental employee; or

(E) the member elects inactive membership status in The Florida Bar.

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(2) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) complete 3 elective, basic, substantive continuing legal education programs sponsored by the YLD within 24 months of deferment expiration.

**(c) Exemption.**

(1) *Governmental Practice.* An exemption from rule 6-12.3(a)(1) shall be granted if a member who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination has already or thereafter been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years. An exemption from rule 6-12.3(a)(2) shall be granted if a member has been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years.

(2) *Foreign Practice.* An exemption from rule 6-12.3(a)(2) shall be granted if a member has been continuously engaged in the practice of law (non-governmental) in a foreign jurisdiction for a period of 5 years, can demonstrate completion of 30 hours of approved continuing legal education within the immediate 3-year period, and can attest that the continuing legal education completed has reasonably prepared the member for the anticipated type of practice in Florida.

Added effective Feb. 8, 2001 (795 So.2d 1); Amended May 12, 2005, Florida Supreme Court opinion (SC04-914) - effective May 12, 2005; February 4, 2010, effective March 6, 2010 (SC09-1427).

## **RULE 6-12.5 NONCOMPLIANCE AND SANCTIONS**

**(a) Notice of Noncompliance.** If a member fails to comply with this rule, the member shall be deemed delinquent as provided as provided elsewhere in the Rules Regulating The Florida Bar. The BLSE shall promptly send a notice of noncompliance to such member.

**(b) Appeal to the Board of Governors.** A delinquent member shall have the right to appeal the determination to the board of governors under such rules and regulations as it may prescribe.

**(c) Appeal to the Supreme Court of Florida.** A delinquent member shall have the right to appeal the determination of the board of governors to the Supreme Court of Florida under such rules and regulations as it may prescribe.

**(d) Exhaustion of Remedies.** A delinquent member must exhaust each of the remedies provided under these rules in the order enumerated before proceeding to the next remedy.

**(e) Tolling Time.** An appeal shall toll the determination of noncompliance and resulting delinquency until such time as all appeals have been completed or the time for taking same has expired.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

HISTORICAL NOTES Former Rule 6-12.4, relating to extension and compliance, was deleted Dec. 18, 1997, effective Jan. 1, 1998, and former Rules 6-12.5, 6-12.6, 6-12.7, and 6-12.8 were renumbered as Rules 6-12.4, 6-12.5, 6-12.6, and 6-12.7, respectively.

#### **RULE 6-12.6 REINSTATEMENT**

Any member delinquent in completion of the BSCR may be reinstated by the executive director or board of governors upon a showing of compliance with the BSCR and payment of a uniform reinstatement fee, as established by the board of governors.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

#### **RULE 6-12.7 CONFIDENTIALITY**

The files and records maintained regarding appeals conducted under this rule and any hearings in connection therewith shall be confidential until such time as the appeals process has concluded. If a member is deemed delinquent pursuant to this rule, that fact shall be public information.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

#### **RULE 6-12.8 DISCIPLINARY ACTION**

The BLSE may refer a member who makes a misrepresentation of a material fact concerning the BSCR for disciplinary investigation as provided elsewhere in these Rules Regulating The Florida Bar.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

## **6-13. STANDARDS FOR BOARD CERTIFICATION IN APPELLATE PRACTICE**

### **RULE 6-13.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Appellate Practice." The purpose of the standards is to identify those lawyers who engage in appellate practice and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in appellate practice.

Adopted July 1, 1993 (621 So.2d 1032). Amended April 9, 1999; August 17, 2007, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-13.2 DEFINITIONS**

**(a) Appellate Practice.** "Appellate practice" is the practice of law dealing with the recognition and preservation of error committed by lower tribunals, and the presentation of argument concerning the presence or absence of error to state or federal appellate courts through brief writing, writ and motion practice, and oral argument. Appellate practice includes evaluation and consultation regarding potential appellate issues or remedies in connection with proceedings in the lower tribunal prior to the initiation of the appellate process.

**(b) Appellate Action.** "Appellate action" means an action filed in a state court, a federal district court, a United States court of appeals, or the Supreme Court of the United States seeking review of a decision of a lower tribunal.

(1) *Timing of Appellate Actions.* Appellate actions in which the applicant filed a principal brief, response or petition as defined in Rule 6-13.2(b), (f) or (g) before the application deadline will be counted as appellate actions regardless of whether the action is settled, dismissed or proceeds to decision on the merits. If the filing date falls outside the time frame for the current filing period, the appellate action will not count towards the required total.

(2) *Supreme Court Briefs.* A brief on the merits following an acceptance of jurisdiction in the United States Supreme Court may be considered as a separate appellate action.

(3) *Consolidated Proceedings.* Appellate proceedings with different case numbers that are consolidated by the court will not be considered separate appellate actions for any purposes for which they have been consolidated.

(4) *Cross-Appeals.* For good cause shown, the committee may determine that a cross-appeal constitutes a separate action from a direct appeal so that an appeal and cross-appeal will count as two "appellate actions" for purposes of this subchapter, if the committee

determines that the applicant had sole or primary responsibility for the filing of two separate principal briefs.

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

**(d) Appellate Practice Certification Committee.** The appellate practice certification committee may include 1 member presently serving as an appellate court judge from a Florida district court of appeal, the Supreme Court of Florida, a United States court of appeals, or the Supreme Court of the United States. Certification in appellate practice is preferred, but is not a requirement. Appointment otherwise will be consistent with rule 6-3.2.

**(e) Primary Responsibility.** Having "primary responsibility" for writing and filing a brief, petition, or response means having the most substantial and direct participation of all the lawyers contributing to that task. Only 1 lawyer may claim primary responsibility for that task. Where primary responsibility is used to meet the requirement, the applicant must specifically identify any other lawyer who provided substantial assistance with the task and demonstrate that the applicant's level of participation was primary to the satisfaction of the appellate practice certification committee. For the purposes of meeting the primary responsibility brief writing requirements under this subchapter, credit for a brief, petition, or response that does not designate the applicant as an author may be considered if accompanied by a certification from at least 1 of the designated authors that the applicant had the most substantial and direct participation in the preparation of the brief.

**(f) Principal Briefs in Appeals.** "Principal briefs in appeals" means the primary brief on the merits and excludes reply briefs (including reply briefs that also serve as answer briefs on cross-appeal), jurisdictional briefs, supplemental briefs, and amicus briefs. For good cause shown, the appellate practice certification committee may treat a reply brief (including a reply brief that also serves as an answer brief on cross-appeal), jurisdictional brief, supplemental brief, or amicus brief as a principal brief for the purpose of these rules, if the brief is substantial and reflects a level of effort and preparation comparable to that required to produce a principal brief. For good cause shown, the committee may treat a combined answer brief and initial brief on cross-appeal as separate principal briefs if the brief reflects a level of effort and preparation comparable to that required to produce separate principal briefs.

**(g) Petitions or Responses in Extraordinary Writ Cases.** "Petitions or responses in extraordinary writ cases" refer to a petition or response to a petition that seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or administrative agency. The term includes a petition or response to a petition for a writ of certiorari filed in the Supreme Court of the United States. The term does not include any other petition or response to a petition that merely requests discretionary appellate review, such as a notice to invoke the discretionary jurisdiction of the Supreme Court of Florida, or for permission to appeal to a United States Court of Appeals an order of a district court pursuant to, for example, 28 U.S.C. §1292(b) or Federal Rule of Civil Procedure 23(f).

**(h) Good Cause.** "Good cause" exceptions allow the appellate practice certification committee the discretion to waive technical compliance with the relevant requirement. The committee may, in its discretion, allow certification or recertification of an individual where the

applicant's proffered circumstances demonstrate that the applicant has the special knowledge, skill, and proficiency, or a reasonable equivalent to satisfy the requirement. The committee will consider a good cause exception only on specific request by the applicant.

Adopted July 1, 1993 (621 So.2d 1032). Amended April 9, 1999; August 17, 2007; May 31, 2013; January 29, 2016; January 20, 2017 by the Board of Governors of The Florida Bar.

### **RULE 6-13.3 MINIMUM STANDARDS**

**(a) Substantial Involvement.** The applicant must have been engaged in the practice of law for at least 5 years. During the 3-year period immediately preceding the date of application, at least 30 percent of the applicant's practice must have been spent in substantial and direct involvement in appellate practice sufficient to demonstrate special competence as an appellate lawyer. For good cause shown, the appellate practice certification committee may waive up to 2 of the 3 years' substantial involvement for individuals who have served as appellate judges or as a clerk, career attorney, or staff attorney in an appellate court. Substantial involvement during the year immediately preceding the application will not be waived.

**(b) Appellate Actions.** During the 5-year period immediately preceding application, the applicant must have had sole or primary responsibility in at least 25 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or responses in extraordinary writ cases.

**(c) Oral Arguments.** During the 5-year period immediately preceding application, the applicant must have presented at least 5 oral arguments to an appellate court. The oral arguments to an appellate court need not have been presented in the same cases listed on the application as appellate actions. The appellate practice certification committee may waive this requirement on good cause shown.

**(d) Education.** During the 3-year period immediately preceding the filing of an application, the applicant must demonstrate completion of 45 credit hours of approved continuing legal education for appellate practice certification. Accreditation of educational hours is subject to policies established by the appellate practice certification committee or the board of legal specialization and education.

**(e) Peer Review.**

(1) The applicant must submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must be involved in appellate practice and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on appellate matters within the last 2 years to attest to the applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The appellate practice certification committee may send reference forms to other lawyers and judges.

**(f) Examination.** Every applicant must pass an examination designed to demonstrate sufficient knowledge, proficiency and experience in appellate practice – including the recognition, preservation, and presentation of trial error, and knowledge and application of the rules of appellate procedure applicable to state and federal appellate practice in Florida – to justify the representation of special competence to the legal profession and public.

Adopted July 1, 1993 (621 So.2d 1032). Amended Nov. 21, 1997; April 9, 1999; August 17, 2007; May 31, 2013; January 29, 2016 by the Board of Governors of The Florida Bar.

### **RULE 6-13.4 RECERTIFICATION**

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

**(a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in the practice of law, of which at least 30 percent must have been spent in actual participation in appellate practice.

**(b) Appellate Actions.** The applicant must have had sole or primary responsibility in at least 15 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or responses thereto in extraordinary writ cases. For good cause, the appellate practice certification committee may waive this requirement for applicants who have been continuously certified for 14 or more years.

**(c) Oral Arguments.** The applicant must have presented at least 5 oral arguments to an appellate court. The oral arguments to an appellate court need not have been presented in the same cases listed on the application as appellate actions. The appellate practice certification committee may waive this requirement on good cause shown.

**(d) Education.** The applicant must demonstrate completion of at least 50 credit hours of approved continuing legal education for appellate practice certification. This requirement may be satisfied by the applicant's participation in at least 30 hours of continuing judicial education approved by the Supreme Court of Florida.

**(e) Peer Review.**

(1) The applicant must submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must be involved in appellate practice and familiar with the applicant's practice.

(2) The applicant must submit the names and addresses of at least 2 judges before whom the applicant has appeared on appellate matters within the last 2 years to attest to the

applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The appellate practice certification committee may send reference forms to other lawyers and judges.

**(f) Judges.**

(1) An applicant who is serving as an appellate court judge on a Florida district court of appeal, the Supreme Court of Florida, a United States court of appeals, or the United States Supreme Court, and who applies for recertification while serving as a judge of that court, will be deemed to have met the requirements of subdivisions (a)-(c) of this rule, and the appellate practice certification committee may waive compliance with the requirements of subdivision (e) of this rule, for good cause shown.

(2) For an applicant who is subject to the Code of Judicial Conduct and who performs or has performed judicial functions on a full-time basis during a substantial portion of the period since the last date of certification, the appellate practice certification committee may waive compliance with the requirements of subdivisions (a) - (c) and (e) of this rule, for good cause shown, provided the applicant has complied with all other requirements for recertification.

**(g) Good Cause.** Subject to the requirements of rule 6-13.2(h), in determining good cause under this rule, the appellate practice certification committee will consider, if requested, the length of time the applicant has been certified; the applicant's supervisory responsibility for appellate actions or oral arguments since the date of the last certification application; the nature and complexity of the applicant's appellate actions since the last application for certification; the number of appellate actions in the applicant's career; and any health, career, or other factors that may have limited the number of appellate actions or oral arguments since the date of the last application for certification.

Adopted July 1, 1993 (621 So.2d 1032). Amended Nov. 21, 1997; April 9, 1999; August 17, 2007; February 1, 2008; May 31, 2013; January 29, 2016, by the Board of Governors of The Florida Bar.

**6-14. STANDARDS FOR BOARD CERTIFICATION IN HEALTH LAW  
RULE 6-14.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Health Law." The purpose of the standards is to identify those lawyers who practice in the area of health law and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in health law.

Added Sept. 1, 1994 (641 So.2d 1327). Amended Oct. 22, 1999, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

## RULE 6-14.2 DEFINITIONS

(a) **Health Law.** "Health law" means legal issues involving federal, state, or local law, rules or regulations and health care provider issues, regulation of providers, legal issues regarding relationships between and among providers, legal issues regarding relationships between providers and payors, and legal issues regarding the delivery of health care services.

(b) **Practice of Law.** The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law.

Added Sept. 1, 1994 (641 So.2d 1327). Amended Oct. 22, 1999, by the Board of Governors of The Florida Bar.

## RULE 6-14.3 MINIMUM STANDARDS

(a) **Minimum Period of Practice.** Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

(1) The years of practice of law need not be consecutive.

(2) Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M. degree in health law (or such other related fields approved by the board of legal specialization and education and the health law certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) **Substantial Involvement.** Every applicant must demonstrate substantial involvement in the practice of health law during the 3 years immediately preceding the date of application. Upon an applicant's request and the recommendation of the health law certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement means the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of health law are significant factors and in which the applicant had substantial and direct participation in those health law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be as defined in rule 6-



3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on health law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the health law certification committee but written or oral supplementation may be required.

**(c) Peer Review.** Every applicant shall submit the names and addresses of 5 other attorneys or judges who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, and who can attest to the applicant's reputation for involvement in the field of health law, as well as the applicant's character, ethics, and reputation for professionalism, in accordance with rule 6-3.5(c)(6). The board of legal specialization and education or the health law certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the health law certification committee may also make such additional inquiries as they deem appropriate.

**(d) Education.** Every applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in health law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours, at least 18 hours of which must be obtained through attendance at continuing legal education seminars as described in subdivision (1) below. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to health law. Subject to the requirements and limitations set forth above, the education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;
- (2) lecturing at and/or preparation of outline material of such continuing legal education seminars;
- (3) authoring articles or books published in professional periodicals or other professional publications;
- (4) teaching courses in "health law" at an approved law school or other graduate or undergraduate level program presented by a recognized professional education association;
- (5) completing such home study programs as may be approved by the board of legal specialization and education or the health law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or
- (6) such other methods as may be approved by the health law certification committee.

The board of legal specialization and education or the health law certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed

subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

**(e) Examination.** Every applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of health law to justify the representation of special competence to the legal profession and the public.

Added Sept. 1, 1994 (641 So.2d 1327). Amended March 14-16, 1996, by the Board of Governors of The Florida Bar; Oct. 22, 1999, by the Board of Governors of The Florida Bar.

#### **RULE 6-14.4 RECERTIFICATION**

To be eligible for recertification, an applicant must meet the following requirements:

**(a) Substantial Involvement.** Applicants must demonstrate a satisfactory showing, as determined by the board of legal specialization and education and the health law certification committee, of continuous and substantial involvement in the field of health law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-14.3(b), except that the board of legal specialization and education and the health law certification committee may accept an affidavit from the applicant attesting to the applicant's compliance with the substantial involvement requirement.

**(b) Continuing Legal Education Requirement.** Applicants must demonstrate the completion of at least 100 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified health law attorneys. If the applicant has not attained 100 hours of continuing legal education, but has attained more than 60 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

**(c) Peer Review.** Peer review shall be conducted in accordance with the standards set forth in rule 6-14.3(c).

**(d) Examination Requirement.** If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the health law certification committee determine that the applicant may not meet the standards in health law established under this chapter, the board of legal specialization and education and the health law certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Added Sept. 1, 1994 (641 So.2d 1327). Amended Oct. 22, 1999, by the Board of Governors of The Florida Bar.

**6-15. STANDARDS FOR BOARD CERTIFICATION IN IMMIGRATION AND  
NATIONALITY LAW  
RULE 6-15.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Immigration and Nationality Law." The purpose of the standards is to identify those lawyers who practice immigration and nationality law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified in immigration and nationality law.

Added Sept. 1, 1994 (641 So.2d 1327); amendment approved by Board of Governors on consent agenda October 3, 2008, effective October 3, 2008. Amended and effective October 16, 2015 by Board of Governors.

**RULE 6-15.2 DEFINITIONS**

**(a) Immigration and Nationality Law.** "Immigration and nationality law" is the law dealing with all aspects of the United States Immigration and Nationality Act.

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

Added Sept. 1, 1994 (641 So.2d 1327).

**RULE 6-15.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have been engaged in the practice of law for at least 5 years preceding the date of application.

**(b) Substantial Involvement.** The applicant must demonstrate to the immigration and nationality certification committee substantial involvement in the practice of immigration and nationality law during the 3 years immediately preceding the date of application. Substantial involvement means that the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of immigration and nationality law are significant factors and in which the applicant had substantial and direct participation in those issues. Matters in which issues of immigration and nationality law are significant factors include, but are not limited to:

(1) the representation of clients before the United States Citizenship and Immigration Services and/or Customs and Border Patrol and/or Immigration and Customs Enforcement through either the preparation of petitions and applications for immigration benefits and discretionary relief or the appearance as counsel at deferred inspections, adjustment of status, and other interviews;

(2) the representation of clients before the Executive Office for Immigration Review during exclusion, deportation, removal, asylum only, bond proceedings, and appeals;

(3) the representation of clients before the Department of Labor through the preparation of Labor Certification Applications, Labor Condition Applications, and such other Department of Labor applications, petitions, and processes as are required in the Immigration and Nationality Act as a prerequisite for immigration benefits;

(4) the representation of clients before the Department of State in matters pertaining to the consular processing of visa applications; and

(5) the representation of clients in matters of original and appellate jurisdiction before United States district courts and United States courts of appeals concerning immigration and nationality matters.

The immigration and nationality certification committee may waive the 3 years immediately preceding the date of application requirement upon good cause shown.

**(c) Peer Review.** The applicant must submit to the immigration and nationality certification committee the names and addresses of 5 attorneys who are neither relatives nor current associates or partners, as references to attest to the applicant's reputation for substantial involvement and competence in the field of immigration and nationality law, as well as the applicant's character, ethics, and reputation for professionalism. No less than 1 reference shall be board certified in immigration and nationality law. The immigration and nationality law certification committee may authorize references from persons other than attorneys upon good cause shown.

**(d) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in immigration and nationality law during the 3-year period immediately preceding the date of application.

Accreditation of educational hours is subject to policies established by the immigration and nationality law certification committee or the board of legal specialization and education.

**(e) Examination.** The applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, proficiency, and professionalism in the field of immigration and nationality law to justify the representation of special competence to the legal profession and the public.

Added Sept. 1, 1994 (641 So.2d 1327); amended by Board of Governors on October 3, 2008, effective October 3, 2008.

## **RULE 6-15.4 RECERTIFICATION**

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

**(a) Substantial Involvement.** The applicants must demonstrate continuous and substantial involvement in the field of immigration and nationality law during the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with

the standards set forth in rule 6-15.3(b). Upon good cause shown, the immigration and nationality law certification committee may waive all or any portion of the substantial involvement requirement if an applicant was or is currently a judge presiding over matters of immigration and nationality law.

**(b) Education.** The applicants must demonstrate completion of 100 credit hours of approved continuing legal education in immigration and nationality law. At least 60 of such hours shall be during the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the immigration and nationality law certification committee or the board of legal specialization and education.

**(c) Peer Review.** Peer review shall be conducted in accordance with the standards set forth in rule 6-15.3(c).

**(d) Examination Requirement.** If the immigration and nationality law certification committee determines that the applicant does not meet the standards set forth in subdivision (b) of this rule, the immigration and nationality certification committee may, for good cause shown, require that the applicant pass the examination in lieu thereof.

Added Sept. 1, 1994 (631 So.2d 1327). Amended Jan. 26, 1996, by the Board of Governors of The Florida Bar; Amended October 3, 2008 by Board of Governors of The Florida Bar, effective October 3, 2008.

## **6-16. STANDARDS FOR BOARD CERTIFICATION IN BUSINESS LITIGATION**

### **RULE 6-16.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued a certificate, identifying the lawyer as "Board Certified in Business Litigation." The purpose of the standards is to identify those lawyers who practice in the area of business litigation and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified business litigation lawyers.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; amendment approved by Board of Governors on August 22, 2003; amendments approved by Board of Governors on January 31, 2014.

### **RULE 6-16.2 DEFINITIONS**

**(a) Business Litigation.** "Business litigation" is the practice of law dealing with the legal problems from commercial and business relationships, including litigation of controversies. "Business litigation" includes evaluating, handling, and resolving such controversies before state courts, federal courts, administrative agencies, mediators, and arbitrators. Matters not qualifying for business litigation include areas of practice dealing with personal injury, routine collection matters, marital and family law, or workers' compensation. Courts of "general jurisdiction" include state circuit courts, federal district courts, and courts of similar jurisdiction in other states, but not county courts.

**(b) Practice of Law.** The "practice of law" for this area is defined in subdivision (c)(1) of rule 6-3.5. The practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy this requirement.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; approved by the Board of Governors on August 22, 2003; amendments approved by Board of Governors on January 31, 2014.

### **RULE 6-16.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have at least 5 years of the actual practice of law immediately preceding application, of which at least 30 percent has been spent in active participation in business litigation.

**(b) Minimum Number of Matters.** The applicant must have had substantial involvement in a minimum of 25 contested business litigation matters during the 5-year period immediately preceding application. These matters must have proceeded at least to the filing of a complaint or similar pleading and involve substantial legal or factual issues. At least 8 of the 25 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing. The trier of fact includes any judge or jury of a court of general jurisdiction, an arbitration panel, administrative agency, bankruptcy court, or other similar body. At least 1 of the 8 matters must have been tried before a jury during the 10-year period immediately preceding application. If the applicant has not tried a business litigation matter before a jury, the business litigation certification committee may consider any civil dispute tried before a jury within the allowable time period to satisfy the jury trial requirement. "Submission to the trier of fact" and trial before a jury requires completion of the case in chief of the plaintiff, petitioner, or claimant. If the applicant has not participated in 8 matters submitted to the trier of fact for resolution, the applicant may substitute completion of an advanced trial advocacy seminar for 1 of the 8 matters, either by teaching, attendance, or any combination, provided that an advanced trial advocacy seminar may not be a substitute for the jury trial requirement. This seminar must be 3 full days, approved by the business litigation certification committee, and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings. All course materials for the seminar must be submitted to the business litigation certification committee to be considered for substitute credit. The business litigation certification committee may consider involvement in protracted adversary proceedings to satisfy any of these requirements for good cause shown. A "protracted adversary proceeding" is a "business litigation" matter which, by its very nature, is so time consuming as to preclude the applicant from meeting the requirements of this subdivision. In order to demonstrate compliance with the requirements of this section, the following criteria will be applicable:

(1) summary judgments will not count as 1 of the 8 matters submitted to the trier of fact;

(2) submission to the trier of fact and trial before a jury requires completion of the case in chief of the plaintiff, petitioner, or claimant;

(3) each preliminary injunction or other evidentiary hearing will count as 1 of the 8 matters submitted to the trier of fact; and,

(4) each matter in which the applicant supervises an associate will qualify the matter as 1 of the 25 but not as 1 of the 8 matters submitted to the trier of fact.

**(c) Substantial Involvement.** The applicant must have substantial involvement in contested business litigation cases sufficient to demonstrate special competence as a business litigation lawyer. Substantial involvement includes active participation in client interviewing, counseling and investigating, preparation of pleadings, participation in discovery, taking of testimony, presentation of evidence, negotiation of settlement, drafting and preparation of business litigation settlement agreements, and argument and trial of business law cases.

**(d) Peer Review.** The applicant must submit names and addresses of 5 lawyers, who are not the applicant's associates or partners, as references to attest to the applicant's special competence and substantial involvement in business litigation, as well as the applicant's character, ethics, and reputation for professionalism. The lawyers themselves must be substantially involved in business litigation and familiar with the applicant's practice. At least 1 of these references must be a judge or presiding officer of a court or other tribunal before whom the applicant has appeared as an advocate in a business litigation matter in the 2-year period immediately preceding the application. In addition, the business litigation certification committee may, at its option, send reference forms to other lawyers, judges, or officers and conduct such other investigation as necessary.

**(e) Education.** The applicant must demonstrate completion of at least 50 hours of approved continuing legal education in business litigation within the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the business litigation certification committee or the board of legal specialization and education, and may include such activities as:

(1) teaching a course in business litigation;

(2) participation as a panelist or speaker in a symposium or similar program in business litigation;

(3) attendance at a lecture series or similar program concerning business litigation, sponsored by a qualified educational institution or bar group;

(4) authorship of a book or article on business litigation;

(5) attendance at a course dealing with trial practice procedures but in an area of law not considered business litigation as defined in rule 6-16.2;

(6) attendance at seminars dealing with mediation or arbitration procedures and techniques;

(7) attendance at or participation in a "trial advocacy" workshop leader if the attorney participates in or attends the entire program; and,

(8) other educational activities approved by the business litigation certification committee.

**(f) Examination.** The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, experience, proficiency, and professionalism in business litigation to justify representation of special competence to the legal profession and to the public.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; amended effective June 29, 2000, by the Board of Governors of The Florida Bar; amendment approved by Board of Governors on August 22, 2003; amendment approved by BoG on 6/2/06 and effective on 6/5/06; amendments approved by Board of Governors on January 31, 2014.

### **RULE 6-16.4 RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

**(a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in the field of business litigation in accordance with the standards in subdivision (c) of rule 6-16.3.

**(b) Minimum Number of Matters.** The applicant must have had substantial involvement in a minimum of 25 contested business litigation matters. These matters must have proceeded at least to the filing of a complaint or similar pleading and involve substantial legal or factual issues. At least 5 of the 25 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing, as described in subdivision (b) of rule 6-16.3. If the applicant has not participated in 5 matters submitted to the trier of fact for resolution, the applicant may substitute completion of an advanced trial advocacy seminar for 1 of the 5 required matters, either by teaching, attendance, or a combination. The seminar must be 3 full days, approved by the business litigation certification committee, and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings. All course materials for the seminar must be submitted to the business litigation certification committee to be considered for substitute credit toward 1 of the 5 matters. The business litigation certification committee may consider involvement in protracted adversary proceedings, as defined in subdivision (b) of rule 6-16.3 to satisfy any of these requirements on good cause shown. In order to demonstrate compliance with the requirements of this section, the following criteria are applicable:

(1) summary judgments will not count as 1 of the 5 matters submitted to the trier of fact;

(2) submission to the trier of fact and trial before a jury requires completion of the case in chief of the plaintiff, petitioner, or claimant;

(3) each preliminary injunction or other evidentiary hearing counts as 1 of the 5 matters submitted to the trier of fact;



(4) each matter in which the applicant supervises an associate will qualify the matter as 1 of the 25 but not as 1 of the 5 matters submitted to the trier of fact.

The business litigation certification committee may waive compliance with the evidentiary hearing criteria for an applicant who has been continuously board certified as a business litigation lawyer for a period of 14 years or more on special application for good cause shown.

**(c) Education.** The applicant must have completed at least 50 hours of continuing legal education in the field of business litigation in accordance with subdivision (e) of rule 6-16.3.

**(d) Peer Review.** The applicant must satisfy the reference requirements in rule 6-16.3(d) and meet the standards in subdivision (c)(6) of rule 6-3.5.

**(e) Judges.** On special application, for good cause shown, an applicant who is serving as a judge and applies for recertification will have met the requirements of rule 6-16.4. The business litigation certification committee may waive compliance with any portion of the recertification criteria for an applicant who is an officer of any judicial system as defined in the Code of Judicial Conduct and who performs or has performed judicial functions on a full-time basis during a substantial portion of the period since the last date of certification.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; amendment approved by Board of Governors on August 22, 2003; amendment approved by BoG on 6/2/06 and effective 6/5/06; amendment approved by Board of Governors on March 28, 2008, effective March 28, 2008; amendments approved by Board of Governors on January 31, 2014.

## **6-17. STANDARDS FOR BOARD CERTIFICATION IN ADMIRALTY AND MARITIME LAW**

### **RULE 6-17.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Admiralty and Maritime Law." The purpose of the standards is to identify those lawyers who practice admiralty and maritime law and who have demonstrated special knowledge, skills and proficiency to be properly identified to the public as board certified in admiralty and maritime law.

Added July 20, 1995 (658 So.2d 930). Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-17.2 DEFINITIONS**

**(a) Admiralty Law.** "Admiralty and Maritime Law" is that distinct and separate practice of law dealing with the corpus of rules, concepts, and legal practices governing vessels, the shipping industry, the carrying of goods and passengers by water as well as related maritime concepts. Admiralty and maritime law includes the substantive law and procedural rules associated with the general maritime law of the United States, admiralty jurisdiction and procedure, personal injury and wrongful death of seamen and passengers aboard vessels,

compensation for injury and wrongful death of longshoremen and harbor workers, government regulation of marine safety and the maritime industry, carriage of goods, charter parties, salvage, general average, collision, marine insurance, maritime liens, limitation of liability, marine pollution and environmental law, maritime arbitration, recreational vessels, vessel finance and documentation, international aspects of maritime practice as well as other maritime topics which because of their special history, as well as for historical and practical reasons, have been recognized as distinctly different from our modern system of common law and have been traditionally grouped and practiced as "admiralty and maritime law."

**(b) Practice of Law.** A minimum of 5 years in the practice of law including substantial involvement in the practice of admiralty and maritime law as set forth in rule 6-17.3(b). The term "practice of law" as used in these standards shall be as defined in rule 6-3.5(c)(1).

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

### **RULE 6-17.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for period of 5 years as of the date of application.

Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M degree in admiralty law, ocean law, maritime law or such other related fields approved by the board of legal specialization and education and admiralty law certification committee from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement but not the 5-year bar membership requirement.

**(b) Substantial Involvement.** The applicant must demonstrate substantial involvement in the practice of admiralty and maritime law during the 5 years immediately preceding the date of application, including devoting not less than 35 percent of such practice to admiralty and maritime law during each of the 3 years immediately preceding the date of application. Except for the 3 years immediately preceding the date of application, upon the applicant's request and the recommendation of the admiralty and maritime law certification committee, the board of legal specialization and education may waive the requirement that the 5 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Except for the 3 years immediately preceding the date of application, receipt of an LL.M degree in admiralty law, ocean law, maritime law (or such other degree containing substantial admiralty and maritime law content as approved by the board of legal specialization and education) from an approved law school may substitute for 1 year of substantial involvement. An applicant must furnish information concerning the frequency of work and the nature of issues involved. For the purposes of this section, the "practice of law" shall be as defined in rule 6-3.5(c)(1) except that it shall also include time devoted to lecturing and/or authoring books or articles on admiralty and maritime law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of

questionnaire approved by the admiralty law certification committee, but written or oral supplementation may be required.

**(c) Peer Review.** The applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of admiralty and maritime law, as well as the applicant's character, ethics, and reputation for professionalism. No less than 2 references shall be board certified in admiralty and maritime law or shall have, in the judgment of the committee, an established and recognized admiralty and maritime law practice. The board of legal specialization and education and admiralty law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

**(d) Education.** During the 3-year period immediately preceding the date of the application, the applicant must demonstrate completion of the continuing legal education requirements in admiralty and maritime law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 50 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to admiralty and maritime law. The education requirement may be satisfied by one or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring books or articles published in professional periodicals or other professional publications;

(4) teaching courses in admiralty and maritime law and related subjects at an approved law school or other graduate level program presented by a recognized professional education association;

(5) such other methods as may be approved by the board of legal specialization and education and the admiralty certification committee.

The board of legal specialization and education and the admiralty law certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

**(e) Examination.** The applicant must pass an examination, applied uniformly to all applicants, that will be practical and comprehensive and designed to demonstrate special knowledge, skills, and proficiency in admiralty and maritime law topics including jurisdiction,

procedure, personal injury and wrongful death, marine insurance and such other topics as may be selected by the admiralty certification committee. Such examination shall justify the representation of special competence in the field of admiralty law to the legal profession and the public.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

### **RULE 6-17.4 RECERTIFICATION**

Recertification shall be pursuant to the following standards:

**(a) Substantial Involvement.** A satisfactory showing, as determined by the board of legal specialization and education and the admiralty law certification committee, of continuous and substantial involvement in admiralty and maritime law throughout the period since the last date of certification. The demonstration of substantial involvement of at least 35 percent during each year of certification or prior recertification shall be made in accordance with the standards set forth in rule 6-17.3(b).

**(b) Education.** Completion of at least 55 hours of approved continuing legal education since the filing of the last application for certification. This requirement shall be satisfied by the applicant's participation in approved continuing legal education pursuant to rule 6-17.3(d)(1) through (5).

**(c) Peer Review.** Submission of the names and addresses of 3 individuals who are active in admiralty and maritime law, including but not limited to lawyers and judges who are familiar with the applicant's practice, excluding persons who are currently employed in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of admiralty and maritime law, as well as the applicant's character, ethics, and reputation for professionalism, during the period since the last date of certification. The board of legal specialization and education or the admiralty law certification committee may solicit references from persons other than those whose names are submitted by the applicant and may also make additional inquiries as deemed appropriate.

**(d) Examination.** If, after reviewing the material submitted by an applicant for recertification and the peer review, the admiralty law certification committee determines the applicant may not meet the standards for admiralty law certification established under this chapter, the applicant may be required, as a condition of recertification, to pass the admiralty and maritime examination given to new applicants.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

## **6-18. STANDARDS FOR BOARD CERTIFICATION IN CITY, COUNTY AND LOCAL GOVERNMENT LAW**

## **RULE 6-18.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in City, County and Local Government Lawyer." The purpose of the standards is to identify those lawyers who practice city, county and local government law and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in city, county and local government law.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

## **RULE 6-18.2 DEFINITIONS**

**(a) City, County and Local Government Law.** "City, County and Local Government Law" is the practice of law dealing with legal issues of county, municipal or other local governments, such as, but not limited to, special districts, agencies and authorities, including litigation in the federal and state courts and before administrative agencies; the preparation of laws, ordinances and regulations; and the preparation of legal instruments for or in behalf of city, county and local governments.

**(b) Practice of Law.** The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than providing legal counsel or representation (including, but not limited to, work related to the administration of government or representing government as an elected official or as a state legislative lobbyist) shall not be treated as the practice of law.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

## **RULE 6-18.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M. degree in urban affairs (or such other related fields approved by the board of legal specialization and education and the city, county and local government certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purpose of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subsection. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subsection; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would

not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

**(b) Substantial Involvement.** The applicant must demonstrate substantial involvement in the practice of Florida city, county and local government law during each of the 3 years immediately preceding the date of application. Upon an applicant's request and the recommendation of the city, county and local government certification committee, the board of legal specialization and education may waive the requirement that each of the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement means the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of Florida city, county and local government law are significant factors and in which the applicant had substantial and direct participation in those issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purpose of this subsection the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on city, county and local government law if the applicant was otherwise engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the city, county and local government certification committee but written or oral supplementation may be required.

**(c) Peer Review.** The applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who are currently employed by the same governmental entity as the applicant or who currently practice in the applicant's law firm, who can attest to the applicant's reputation for special competence and substantial involvement, as well as the applicant's character, ethics, and reputation for professionalism, in the field of city, county and local government law. Such lawyers themselves shall be substantially involved in Florida city, county and local government law. The board of legal specialization and education and the city, county and local government certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

**(d) Education.** The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in Florida city, county and local government law as follows: the required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to Florida city, county and local government law. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;
- (2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in "city, county and local government law" at an approved law school or other graduate level program presented by a recognized professional education association;

(5) such other methods as may be approved by the board of legal specialization and education and the city, county and local government certification committee.

The board of legal specialization and education or the city, county and local government certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above listed paragraphs. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subsections (2), (3), and (4) above.

**(e) Examination.** The applicant must pass a written examination, applied uniformly to all applicants, designed to demonstrate sufficient knowledge, skills, and proficiency in the field of Florida city, county and local government law to justify the representation of special competence to the legal profession and the public.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

## **RULE 6-18.4 RECERTIFICATION**

Recertification shall be pursuant to the following standards:

**(a) Substantial Involvement.** A satisfactory showing, as determined by the board of legal specialization and education and the city, county and local government certification committee, of continuous and substantial involvement in the field of Florida city, county and local government law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-18.3(b), except that the board of legal specialization and education and the city, county and local government certification committee may accept an affidavit from the applicant attesting to the applicant's compliance with the substantial involvement requirement.

**(b) Education.** Completion of at least 60 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified city, county and local government lawyers. If the applicant has not attained 60 hours of continuing legal education, but has attained more than 30 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

**(c) Peer Review.** The applicant shall submit the names and addresses of 3 other attorneys who are familiar with the applicant's practice, not including attorneys who are currently

employed by the same governmental entity as the applicant or who currently practice in the applicant's law firm, who can attest to the applicant's reputation for special competence and substantial involvement, as well as the applicant's character, ethics, and reputation for professionalism, in the field of city, county and local government law. Such lawyers themselves shall be substantially involved in Florida city, county and local government law. The board of legal specialization and education and the city, county and local government certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

**(d) Examination.** If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the city, county and local government certification committee determine that the applicant may not meet the standards in city, county and local government law established under this chapter, the board of legal specialization and education and the city, county and local government certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

## **6-19. STANDARDS FOR BOARD CERTIFICATION IN AVIATION LAW**

### **RULE 6-19.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Aviation Law." The purpose of the standards is to identify those lawyers who practice aviation law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in aviation law.

Added July 20, 1995 (658 So.2d 930); Amended by Board of Governors October 3, 2008. Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-19.2 DEFINITIONS**

**(a) Aviation Law.** "Aviation law" includes all facets of the law dealing with aeronautical and aerospace activities and the ownership, operation, maintenance, and use of aircraft, airports and airspace. It also involves licensing and aeromedical issues encompassed by the Federal Aviation Act and the associated federal aviation regulations promulgated under it. It also includes all facets of the laws dealing with space travel and the use of outer space, and all facets of the law dealing with aviation and airline employment.

**(b) Practice of Law.** The "practice of law" for this area is defined in chapter 6 of The Rules Regulating the Florida Bar.

Added July 20, 1995 (658 So.2d 930). Amended January 20, 2017 by the Board of Governors of The Florida Bar.



### **RULE 6-19.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

**(b) Substantial Involvement.** The applicant must demonstrate substantial involvement sufficient to show special knowledge, skills, and proficiency in the practice of aviation law during the 3 years immediately preceding the date of application. Substantial involvement is defined as including devoting at least 30 percent of one's practice to matters in which issues of aviation law are significant factors and in which the applicant had substantial and direct participation in those aviation issues. Upon the applicant's request and the recommendation of the aviation law certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances.

The applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision, the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on fields of aviation law if the applicant was engaged in the practice of law during such period.

Demonstration of compliance with this requirement shall be made initially in the form of a questionnaire approved by the aviation law certification committee, but written or oral supplementation may be required.

**(c) Peer Review.** The applicant shall submit the names and addresses of 5 attorneys or judges, who are neither relatives nor current associates or partners, who are familiar with the applicant's practice and who can attest to the applicant's special competence and substantial involvement in the field of aviation law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the aviation law certification committee may authorize references from persons other than attorneys in such cases as deemed appropriate. The board of legal specialization and education and the aviation law certification committee may also make such additional inquiries as deemed appropriate.

**(d) Education.** The applicant must demonstrate that during the 3-year period immediately preceding the date of filing an application, the applicant has met the continuing legal education requirements necessary for aviation law. The required number of hours must be established by the board of legal specialization and education and must in no event be less than 60 hours. Accreditation of educational hours is subject to policies established by the aviation law certification committee or the board of legal specialization and education.

**(e) Examination.** The applicant must pass a written examination that is practical, objective, and designed to demonstrate special knowledge, skills, and proficiency in aviation law to justify the representation of special competence to the legal profession and the public.

Added July 20, 1995 (658 So.2d 930); Amended October 3, 2008 by The Florida Bar Board of Governors, effective October 3, 2008.

## **RULE 6-19.4 RECERTIFICATION**

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

**(a) Substantial Involvement.** The applicant must make a satisfactory showing, as determined by the board of legal specialization and education and the aviation law committee, of continuous and substantial involvement in aviation law throughout the period since the last date of certification. The demonstration of substantial involvement of at least 30 percent during the 5 years prior to recertification shall be made in accordance with the standards set forth in rule 6-19.3(b).

**(b) Education.** The applicant must show completion of at least 60 hours of accredited continuing legal education in aviation law since the filing of the last application for certification.

**(c) Peer Review.** The applicant shall submit the names and addresses of 3 attorneys or judges, who are neither relatives nor current associates or partners, who are familiar with the applicant's practice and who can attest to the applicant's special competence and substantial involvement in the field of aviation law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the aviation law certification committee may also make such additional inquiries as deemed appropriate.

Added July 20, 1995 (658 So.2d 930); Amended October 3, 2008.

## **6-20. STANDARDS FOR BOARD CERTIFICATION IN ELDER LAW**

### **RULE 6-20.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may apply to The Florida Bar board of legal specialization and education for a certificate identifying the lawyer as "Board Certified in Elder Law." The purpose of the standards is to identify those lawyers who practice in the area of elder law and who have the experience, knowledge, skills, and judgment to be properly identified to the public as board certified in elder law.

Added July 17, 1997 (697 So.2d 115). Amended and effective October 16, 2015 by Board of Governors.

## **RULE 6-20.2 DEFINITIONS**

**(a) Elder Law.** "Elder law" means legal issues involving health and personal care planning, including: advance directives; lifetime planning; family issues; fiduciary representation; capacity; guardianship; power of attorney; financial planning; public benefits and insurance; resident rights in long-term care facilities; housing opportunities and financing; employment and retirement matters; income, estate, and gift tax matters; estate planning; probate; nursing home claims; age or disability discrimination and grandparents' rights. The specialization encompasses all aspects of planning for aging, illness, and incapacity. Elder law clients are predominantly seniors, and the specialization requires a practitioner to be particularly sensitive to the legal issues impacting these clients.

Added July 17, 1997 (697 So.2d 115).

## **RULE 6-20.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

**(b) Substantial Involvement.** The applicant must demonstrate substantial involvement in elder law as defined by the following:

(1) At least 5 years of law practice, of which at least 40 percent has been spent in active participation in elder law. At least 3 years of this practice shall be immediately preceding application.

(2) Substantial involvement means the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of elder law are significant factors and in which the applicant had substantial and direct participation in those elder law issues in each of the 3 years preceding the application. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on elder law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the elder law certification committee but written or oral supplementation may be required.

**(c) Practical Experience.** During the 3 years immediately preceding the application, the applicant shall have provided legal services in at least 60 matters as follows:

(1) Forty must be in categories listed in (A) through (E) below, with at least 5 matters in each category.

(2) Ten of the matters must be in categories listed in (F) through (M) below. No more than 5 in any 1 category may be credited toward the total requirement of 60 matters.

(3) The remaining 10 matters may be in any category listed in (A) through (M) below, and are not subject to the limitation contained in parts (1) or (2) of this subdivision.

(4) As used in this subdivision, an applicant will be considered to have "provided legal services" if the applicant: 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; 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; 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 provided representation to a party in contested litigation or administrative matters concerning an elder law issue.

(5) The categories are:

(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 Medicare, Medicaid, Social Security, Supplemental Income, Veterans' benefits, and food stamps.

(F) 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.

(G) Resident rights advocacy, including advising patients and residents of hospitals, nursing facilities, continuing 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.

(H) 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.

(I) Employment and retirement advice, including pensions, retiree health benefits, unemployment benefits, and other benefits.

(J) Income, estate, and gift tax advice, including consequences of plans made and advice offered.

(K) Counseling about tort claims against nursing homes.

(L) Counseling with regard to age and/or disability discrimination in employment and housing.

(M) 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) Peer Review.** The applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of elder law. The board of legal specialization and education and elder law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

**(e) Education.** The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in elder law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to elder law. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in elder law at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the elder law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or

(6) such other methods as may be approved by the board of legal specialization and education and the elder law certification committee.

The elder law certification committee shall establish policies applicable to this subdivision, including, but not limited to, the method of establishment of the number of hours allocable to any of the preceding requirements. Such policies shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

**(f) Examination.** The applicant must pass an examination designed to demonstrate sufficient knowledge, proficiency, and experience in elder law to justify the representation of special competence to the legal profession and the public.

**(g) Exemption.** Any applicant who as of the effective date of these standards is: currently certified by the National Elder Law Foundation and meets all other requirements set forth under subdivisions (a) through (e), shall be exempt from the examination. This exemption shall only be applicable with respect to any applicant meeting the aforesaid requirements and whose application is submitted within 2 years from the effective date of these standards.

Added July 17, 1997 (697 So.2d 115).

## **RULE 6-20.4 RECERTIFICATION**

To be eligible for recertification, an applicant must meet the following requirements:

**(a) Substantial Involvement.** Applicants must demonstrate a satisfactory showing, as determined by the board of legal specialization and education and the elder law certification committee, of continuous and substantial involvement in the field of elder law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-20.3(b) and (c).

**(b) Continuing Legal Education.** Applicants must demonstrate the completion of at least 125 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified elder law attorneys. If the applicant has not attained 125 hours of continuing legal education, but has attained more than 75 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

(c) **Peer Review.** Peer review shall be conducted in accordance with the standards set forth in rule 6-20.3(d).

Added July 17, 1997 (697 So.2d 115).

## **6-21. STANDARDS FOR BOARD CERTIFICATION IN INTERNATIONAL LAW**

### **RULE 6-21.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in International Law." The purpose of the standards is to identify those lawyers who practice in the area of international law and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in international law.

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-21.2 DEFINITIONS**

(a) **International Law.** "International law" is the practice of law dealing with issues, problems, or disputes arising from any and all aspects of the relations between or among states and international organizations as well as the relations between or among nationals of different countries, or between a state and a national of another state, including transnational business transactions, multinational taxation, customs, and trade. The term "international law" includes foreign and comparative law.

(b) **Practice of Law.** The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant's activity is spent as a teacher of international law subjects in an accredited law school.

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar.

### **RULE 6-21.3 MINIMUM STANDARDS**

(a) **Minimum Period of Practice.** The applicant shall have been engaged in the practice of law, either in the United States or abroad, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia, for a period of not less than 5 years as of the date of application. The years of law practice need not be consecutive. Receipt of an LL.M. degree in international law, as defined in rule 6-21.2(a), or in such other field as may be approved by the international law certification committee, shall be deemed to constitute 1 year of the practice of law requirement, but not the 5-year bar membership requirement, specified in this subdivision.

**(b) Substantial Involvement.** The applicant shall demonstrate substantial involvement in the practice of international law during each of the 3 years immediately preceding the date of application. Except for the 2 years immediately preceding application, receipt of an LL.M. degree, as defined in rule 6-21.2(a), may substitute for 1 year of substantial involvement. Substantial involvement shall mean that the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of international law played a significant role and in which the applicant had substantial and direct participation. For purposes of this subdivision, time devoted to lecturing on or writing about international law may be included. Although demonstration of compliance with this requirement shall be made initially through a form approved by the international law certification committee, the international law certification committee may at its option require written or oral supplementation.

**(c) Education.** The applicant shall demonstrate that during the 3-year period immediately preceding the date of application, the applicant has completed at least 60 hours of continuing legal education in the field of international law. This requirement can be met through: attendance at continuing legal education seminars on international law; satisfactory completion of graduate level law school courses while enrolled in an LL.M. program in international law or comparative law; satisfactory completion of graduate level law school courses involving international law aspects while enrolled in a graduate law program; lecturing at continuing legal education seminars on international law; authoring articles or books on international law; or teaching courses on international law at an accredited law school. The international law certification committee shall promulgate uniform regulations for the operation of the subdivision.

**(d) Peer Review.** The applicant shall submit the names and addresses of 5 other attorneys or judges who are familiar with the applicant's practice, excluding individuals who currently are employed by the same employer as the applicant, and who can attest to the applicant's special competence and substantial involvement in international law, as well as the applicant's character, ethics, and reputation for professionalism. The international law certification committee may at its option send reference forms to other attorneys and judges.

**(e) Examination.** The applicant shall take and pass an examination designed to demonstrate sufficient knowledge, skills, and proficiency in international law to justify the representation of special competence to the legal profession and the public.

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar.

## **RULE 6-21.4 RECERTIFICATION**

Recertification shall be pursuant to the following standards:

**(a) Substantial Involvement.** The applicant shall demonstrate continuous and substantial involvement in the practice of international law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-21.3(b).



**(b) Education.** The applicant shall show completion of at least 75 hours of continuing legal education in international law since the filing of the last application for certification. In determining whether an applicant has satisfied this requirement, the standards set forth in rule 6-21.3(c) shall be followed.

**(c) Peer Review.** The applicant shall submit the names and addresses of 5 other attorneys or judges who are familiar with the applicant's practice, excluding individuals who currently are employed by the same employer as the applicant, and who can attest to the applicant's special competence and substantial involvement in international law, as well as the applicant's character, ethics, and reputation for professionalism. The international law certification committee may at its option send reference forms to other attorneys and judges.

**(d) Examination.** If, after reviewing the material submitted for recertification, the international law certification committee determines that the applicant may not meet the standards established by this chapter, it may require, as a condition of recertification, that the applicant take and pass the examination specified in rule 6-21.3(e).

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar.

## **6-22. STANDARDS FOR BOARD CERTIFICATION IN ANTITRUST AND TRADE REGULATION LAW**

### **RULE 6-22.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Antitrust and Trade Regulation Law." The purpose of the standards is to identify those lawyers who practice in the area of antitrust law, unfair methods of competition, and deceptive, unfair, or unconscionable trade practices and who have the special knowledge, skills, experience, and judgment, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in antitrust and trade regulation law. Applicants are required to establish that they have a special ability as a consequence of broad and varied experience in antitrust and trade regulation law, including the following:

- (a)** a ready grasp of the substantive and procedural law bearing on this area of practice;
- (b)** an awareness of and experience with the range of appropriate courses of action and remedies that can be invoked in aid of clients involved in such matters;
- (c)** a sound judgment in proposing solutions and approaches, so that proportion both as to expense and delay is maintained between the nature of the problem to be solved and the 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.

Added and amended March 23, 2000 (763 So.2d 1002); amended December 5, 2003. Amended and effective October 16, 2015 by Board of Governors.

## **RULE 6-22.2 DEFINITIONS**

**(a) Antitrust Law.** "Antitrust law" covers 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 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 involve, but are not limited to: price fixes, limitations on production, division of markets, boycotts, 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 area of law dealing with 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.

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

**(d) Contested Matters.** "Contested matters" shall be defined as matters that were pending before an enforcement agency, a tribunal, or court that were adversarial and binding in which the applicant had a significant responsibility and personal involvement, and in which the applicant 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 of a matter after it was the subject of substantial litigation or proceedings before an enforcement authority.

**(e) Adjudicated Decision.** An "adjudicated decision" on significant issues of antitrust or trade regulation law shall be defined as a decision resulting from a proceeding in which:

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

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

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

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

### **RULE 6-22.3 MINIMUM STANDARDS**

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

(1) *Minimum Period of Practice.* The applicant must have actually practiced law for 5 years immediately preceding the filing of the application for certification, during which the applicant was involved in at least 8 matters that substantially involved antitrust or trade regulation law.

(2) *Minimum Number of Matters.* The applicant must have handled a minimum of 8 contested matters that involved representation of a client beyond counseling during the 10 years immediately preceding application. All such matters must have substantially involved legal and factual issues, and at least 50 percent of the matters must have involved federal antitrust law or state or federal trade regulation law. In each of these 8 matters, the applicant shall have had senior level responsibility for all or a majority of the counseling, advice, and supervision, 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, the antitrust and trade regulation certification committee shall consider involvement in protracted matters as separate matters on the following basis: every documented 300 hours of work on antitrust or trade regulation issues in a case shall be considered to be the equivalent of an additional matter for purposes of meeting the threshold of a minimum of 8 contested matters during the 10 years 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) *Substantial Involvement.* The applicant shall have substantial involvement in matters involving federal antitrust, 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 client interviewing, counseling, evaluating, investigating, preparing pleadings, motions, and memoranda, participating in discovery, taking testimony, briefing issues, presenting evidence, negotiating settlement, drafting and preparing settlement agreements, and/or arguing, trying, or appealing cases involving antitrust law or trade regulation law.

**(b) Peer Review.** The applicant shall select and submit names and addresses of at least 5 lawyers or judges, who are neither relatives nor present or former associates or partners, as references to attest to the applicant's substantial involvement in antitrust and trade regulation law, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers should be substantially involved in antitrust and trade regulation law and familiar with the applicant's practice. In addition, the antitrust and trade regulation certification committee may, at its option, send reference forms to other attorneys, judges, or officers and make such other investigation and verification as necessary.

**(c) Education.** The applicant shall demonstrate completion of at least 50 hours of approved continuing legal education in the field of antitrust and trade regulation law within the 3 years preceding the date of application. Accreditation of educational hours is subject to policies established by the antitrust and trade regulation certification committee or the board of legal specialization and education.

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

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

Added and amended March 23, 2000 (763 So.2d 1002); amended December 5, 2003; amended February 17, 2006.

## **RULE 6-22.4 RECERTIFICATION**

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

**(a) Substantial Involvement.** The applicant must show continuous and substantial involvement in the field of antitrust and trade regulation law. The demonstration of substantial involvement shall be made by showing that antitrust and trade regulation law comprises at least 30 percent of the applicant's practice, and that the applicant actively participated in client interviewing, counseling, evaluating, investigating, preparing pleadings, motions, and memoranda, participating in discovery, taking testimony, briefing issues, presenting evidence, negotiating settlement, drafting and preparing settlement agreements, and/or arguing, trying, or appealing cases involving antitrust or trade regulation law.

**(b) Minimum Number of Matters.** The applicant must have handled a minimum of 4 contested antitrust or trade regulation matters. All contested matters must have involved substantial legal or factual issues in the law of antitrust or trade regulation as determined by the certification committee. On good cause shown, for satisfaction in part of the 4 antitrust or trade regulation matters, the antitrust and trade regulation certification committee may consider involvement in protracted matters on the same basis as set forth in rule 6-22.3(a)(2).

**(c) Peer Review.** An applicant for recertification must submit the names and 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 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. Lawyers who practiced law with the applicant during the recertification period and relatives may not be used as references. The antitrust and trade regulation 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 certification, in accordance with the standards set forth in rule 6-22.3(c).

**(e) Waiver of Compliance.** The antitrust and trade regulation 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 Trade Commission (or a member of its staff), or an assistant attorney general in the Antitrust Division of the Department of Justice (or a member of his or her staff), or an assistant attorney general in the Antitrust Division of a state attorney general's office on a full-time basis during the portion of the period since the last date of certification or recertification; or

(3) good cause shown.

Added and amended March 23, 200 (763 So.2df 1002); amended by BoG August 26, 2005.

## **6-23. STANDARDS FOR BOARD CERTIFICATION IN LABOR AND EMPLOYMENT LAW RULE 6-23.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board

Certified in Labor and Employment Law." The purpose of the standards is to identify those lawyers who practice labor and employment law and who have demonstrated special knowledge, skills, and proficiency to be properly identified to the public as board certified in labor and employment law.

Added and amended effective March 23, 2000 (763 So.2d 1002). Amended and effective October 16, 2015 by Board of Governors.

## **RULE 6-23.2 DEFINITIONS**

**(a) Labor and Employment Law.** The practice of labor and employment law encompasses advice and representation concerning the application and interpretation of public and private sector labor and employment law principles, as well as employment discrimination and employment-related civil rights law. The diversity of this practice area is demonstrated by the experience requirements set forth in rule 6-23.3(c), however, competent practice in labor and employment law requires a thorough knowledge of all legal aspects of the employment relationship, both in the private and public sector. This knowledge is particularly necessary to fulfill the counseling obligations of attorneys toward their clients. This practice area encompasses both public and private sector collective bargaining and the many state and federal laws that apply to the employment relationship including, but not limited to:

- (1) the National Labor Relations Act, as amended;
- (2) the Fair Labor Standards Act;
- (3) Florida's public sector collective bargaining laws and career service appeals;
- (4) the Employment Retirement Income Security Act;
- (5) the Family Medical Leave Act;
- (6) Title VII of the 1964 Civil Rights Act and Florida's Civil Rights Act;
- (7) the Americans With Disabilities Act;
- (8) Occupational Safety and Health Act;
- (9) the Age Discrimination in Employment Act; and
- (10) the regulations promulgated thereunder.

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

Added and amended effective March 23, 2000 (763 So.2d 1002).

## RULE 6-23.3 MINIMUM STANDARDS

(a) **Minimum Period of Practice.** The applicant shall have at least 5 years of actual law practice of which at least 50 percent has been spent in active participation in labor and employment law. At least 5 years of this practice shall be immediately preceding the application for certification. An LL.M. in the field of labor and employment law may substitute for 1 of the 5 years of law practice required.

(b) **Substantial Involvement.** Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement shall be made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

(c) **Experience.** The applicant shall have a total of 30 days acting as the primary attorney, judge, hearing officer, arbitrator, or mediator in litigation and/or administrative proceedings concerning labor and employment law issues, including but not limited to evidentiary hearings, arbitrations, collective bargaining, representing clients in relation to governmental agencies, mediations, court hearings, taking depositions, and oral arguments. Any such proceeding lasting less than 8 hours, but more than 5 hours, shall be credited a full day. Any such proceeding lasting less than 4 hours, but at least 1 hour, shall be credited a half day. This experience shall have been attained within the 5 years immediately preceding the filing of the application for certification.

(d) **Peer Review.** The applicant shall submit the names and addresses of 6 attorneys who are familiar with the applicant's practice, excluding attorneys who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of labor and employment law, as well as the applicant's character, ethics, and reputation for professionalism. The labor and employment law certification committee shall seek at least 3 additional secondary references. At least 1 of the 6 references shall be from a judge, arbitrator, mediator, or administrator before whom the applicant has appeared or practiced (or in the case of a mediator or arbitrator seeking certification, such references may be from attorneys who have appeared before the applicant) within the 2 years immediately preceding the application.

(e) **Education.** The applicant must demonstrate that during the 3-year period immediately preceding the date of the application, the applicant has met the continuing legal education requirements in labor and employment law. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to labor and employment law. The board of legal specialization and education or the labor and employment law certification committee shall establish policies applicable to this rule. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars in labor and employment law;
- (2) lecturing at continuing legal education seminars in labor and employment law;
- (3) authoring articles, books, or other professional publications on labor and employment law;
- (4) teaching courses in labor and employment law at an accredited law school or other graduate-level program presented by a recognized professional education association;
- (5) completing such home study programs as may be approved by the board of legal specialization and education or the labor and employment law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or
- (6) such other methods as may be approved by the board of legal specialization and education and the labor and employment law certification committee.

**(f) Examination.** The applicant must pass an examination applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in labor and employment law to justify the representation of special competence to the legal profession and the public. The examination will be comprehensive in scope and each applicant will be required to demonstrate at least some knowledge in each specific subject tested. However, applicants will be given the opportunity to emphasize their special knowledge in any 1 or more specific subject areas.

**(g) Exemption.** An applicant who has been substantially involved in labor and employment law for a minimum of 20 years, in accordance with the standards set forth in rules 6-3.5(d) and 6-23.3(b), shall be exempt from the examination. This exemption is only applicable to those applicants who apply within 2 years of the effective date of these standards and meet all other requirements for certification.

Added and amended effective March 23, 2000 (763 So.2d 1002); amended August 26, 2005.

## **RULE 6-23.4 RECERTIFICATION**

Recertification shall be pursuant to the following standards:

**(a) Substantial Involvement.** The applicant shall demonstrate continuous and substantial involvement in labor and employment law throughout the period since filing the last application for certification. Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement shall be made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.



**(b) Experience.** The applicant shall have 25 days of involvement in contested matters involving labor and employment law issues throughout the period since filing the last application for certification. Applicants must have acted as the primary attorney, judge, hearing officer, arbitrator, or mediator in litigation and/or administrative proceedings concerning labor and employment law issues, including, but not limited to evidentiary hearings, arbitrations, collective bargaining, representing clients in relation to governmental agencies, mediations, court hearings, taking depositions, and oral arguments, throughout the period since filing the last application for certification. Any such proceeding lasting less than 8 hours, but more than 5 hours, shall be credited as a full day. Any such proceeding lasting less than 4 hours, but at least 1 hour, shall be credited as a half day.

Direct supervision of attorneys engaged in contested matters, as defined above, may be considered in determining compliance with this requirement.

**(c) Education.** The applicant shall complete no less than 75 hours of continuing legal education in the area of labor and employment law, since filing the last application for certification. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to labor and employment law. The board of legal specialization and education or the labor and employment law certification committee shall establish policies applicable to this rule. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars in labor and employment law;
- (2) lecturing at continuing legal education seminars in labor and employment law;
- (3) authoring articles, books, or other professional publications on labor and employment law;
- (4) teaching courses in labor and employment law at an accredited law school or other graduate-level program presented by a recognized professional education association;
- (5) completing such home study programs as may be approved by the board of legal specialization and education or the labor and employment law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or
- (6) such other methods as may be approved by the board of legal specialization and education and the labor and employment law certification committee.

If the applicant has not attained 75 hours, successful passage of the examination given to new applicants for certification shall satisfy this requirement.

**(d) Peer Review.** The applicant shall submit the names and addresses of at least 3 attorneys and at least 1 judge, arbitrator, mediator, or administrator before whom the attorney has appeared or practiced since the last application for certification. The references may not include lawyers who currently practice in the applicant's law firm. Each reference must attest to the applicant's reputation for special competence and substantial involvement in the field of labor

and employment law, as well as the applicant's character, ethics, and reputation for professionalism.

**(e) Waiver of Compliance.** For an applicant who has been continuously certified as a labor and employment lawyer for a period of 14 years or more, the labor and employment law certification committee may waive compliance with either the experience or substantial involvement criterion for recertification, for good cause shown and provided the applicant has complied with all other requirements for recertification.

Added and amended effective March 23, 2000 (763 So.2d 1002); amended August 26, 2005.

## **6-24. STANDARDS FOR BOARD CERTIFICATION IN CONSTRUCTION LAW**

### **RULE 6-24.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Construction Law." The purpose of the standards is to identify those lawyers who practice construction law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in construction law.

Added May 20, 2004 (SC03-705). Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-24.2 DEFINITIONS**

**(a) Construction Law.** "Construction law" is the practice of law dealing with matters relating to the design and construction of improvements on private and public projects including, but not limited to, construction dispute resolution, contract negotiation, preparation, award and administration, lobbying in governmental hearings, oversight and document review, construction lending and insurance, construction licensing, and the analysis and litigation of problems arising out of the Florida Construction Lien Law, section 255.05, Florida Statutes, and the federal Miller Act, 40 U.S.C. §270.

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

**(c) Construction Law Certification Committee.** The construction law certification committee shall include a minimum of 3 members with experience in transactional construction law and 3 members with experience in construction law litigation.

Added May 20, 2004 (SC03-705).

### **RULE 6-24.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United

States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

**(b) Substantial Involvement.** To become certified as a construction lawyer, a lawyer must demonstrate substantial involvement in construction law. Substantial involvement shall include the following:

(1) At least 5 years of actual practice of law of which at least 40 percent has been spent in active participation in construction law. At least 3 years of this practice shall be immediately preceding application.

(2) Substantial involvement means the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of construction law are significant factors and in which the applicant had substantial and direct participation in those construction law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on construction law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the construction law certification committee but written or oral supplementation may be required.

**(c) Peer Review.** The applicant shall submit the names and addresses of 5 attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of construction law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the construction law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as deemed appropriate.

**(d) Education.** The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in construction law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to construction law. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in construction law at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the construction law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or

(6) such other methods as may be approved by the board of legal specialization and education and the construction law certification committee.

The board of legal specialization and education and the construction law certification committee shall establish policies applicable to this rule, including, but not limited to, approval of credit hours allocable to any of the above-listed continuing legal education activities. Such policies shall provide that credit hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

**(e) Examination.** The applicant must pass an examination, applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in the practice of law applicable to the design and construction of projects in Florida construction law to justify the representation of special competence to the legal profession and the public.

Added May 20, 2004 (SC03-705).

## **RULE 6-24.4 RECERTIFICATION**

Recertification shall be pursuant to the following standards:

**(a) Substantial Involvement.** A satisfactory showing, as determined by the board of legal specialization and education and the certification committee, of continuous and substantial involvement in construction law throughout the period since the last date of certification. The demonstration of substantial involvement of 40 percent or more during each year after certification or prior recertification shall be made in accordance with the standards set forth in rule 6-24.3(b).

**(b) Education.** Completion of at least 75 hours of continuing legal education since the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified in construction law.

**(c) Peer Review.** An applicant for recertification shall submit the names and addresses of 5 attorneys or judges who are familiar with the applicant's practice, not including lawyers who currently practice in the applicant's law firm, who can attest to the applicant's reputation for special competence and substantial involvement in the field of construction law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the construction law certification committee may also make such additional inquiries as they deem appropriate.

Added May 20, 2004 (SC03-705).

**6-25. STANDARDS FOR BOARD CERTIFICATION IN STATE AND FEDERAL  
GOVERNMENT AND ADMINISTRATIVE PRACTICE  
6-25.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in State and Federal Government and Administrative Practice.” The purpose of the standards is to identify those lawyers who practice law before or on behalf of state and federal government entities and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified in state and federal government and administrative practice.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123). Amended and effective October 16, 2015 by Board of Governors.

**6-25.2 DEFINITIONS**

**(a) State and Federal Government and Administrative Practice.** “State and federal government and administrative practice” is the practice of law on behalf of public or private clients on matters including but not limited to rulemaking or adjudication associated with state or federal government entity actions such as contracts, licenses, orders, permits, policies, or rules. State and federal government and administrative practice also includes appearing before or presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

**(b) Government Entity.** “Government entity” means any state agency, political subdivision, special district, or instrumentality of the state of Florida, and any federal agency, bureau, corporation, instrumentality or other government body of the United States, including the United States armed forces. This definition should be broadly construed.

**(c) Lead Advocate.** “Lead advocate” means serving as the primary attorney, whether as a team leader or alone, working on behalf of either a private party or a government entity. Service as a supervisor and signatory of legal documents, but without substantial participation in the preparation of those documents, does not constitute service as a lead advocate. Service in the role of lead advocate also includes presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

**(d) Practice of Law.** The “practice of law” is defined as set forth in rule 6 3.5(c)(1).

**(e) State and Federal Government and Administrative Practice Certification Committee.** The state and federal government and administrative practice certification committee shall include at least 2 attorneys employed by government entities in Florida, at least 1 attorney employed by a federal government entity, and at least 3 attorneys in private practice.

While all committee members should have experience in rulemaking and adjudication, the committee should also include at least 2 attorneys whose state and federal government and administrative practice is primarily non-litigation.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

### **6-25.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have been engaged in a state or federal government and administrative practice for at least 5 years preceding the date of application. The years of law practice need not be consecutive.

**(b) Practice Requirements.** The practice requirements shall be as follows:

(1) *Substantial Involvement.* The applicant must demonstrate substantial involvement in a state and federal government and administrative practice during 3 of the last 5 years immediately preceding application. Any applicant who meets the practical experience requirements in subdivisions 6 25.3(b)(2)(A)-(I) below is presumed to meet this requirement.

(2) *Practical Experience.* The applicant must demonstrate broad substantial practical experience in state or federal government and administrative practice by providing examples of service as the lead advocate on behalf of a private client or a government entity or instrumentality. Using the point values and limitations assigned below, the applicant's experience examples from the following actions must total at least 100 points and have been performed within 20 years preceding the filing of the application:

(A) administrative hearings, involving disputed issues of material fact [Section 120.57(1), Florida Statutes] and adjudicated through final order pursuant to the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (5 points each);

(B) fully-adjudicated administrative actions or rulemaking proceedings pursuant to the Federal Administrative Procedure Act, 5 U.S.C. §§ 551-559, and other federal APA proceedings, including record review proceedings, pursuant to 5 U.S.C. §§ 701-706 (5 points each);

(C) any other fully-adjudicated state or federal administrative or civil proceeding before an administrative forum, hearing officer, magistrate, arbitrator, state or federal district, circuit or supreme court, or other forum, in which the applicant represents a party in a lawsuit brought by or against a government entity. Applicants are encouraged to identify cases involving state or federal constitutional or statutory matters, state or federal regulations, ethics, open government, public records, or sovereign immunity. Experience working on matters exclusively involving city, county, and local government law (such as code enforcement, municipal financing and licensing, local referenda, ordinances, and zoning) does not constitute practical experience for purposes of obtaining state and federal government and administrative practice certification (5 points each);

(D) rulemaking proceedings through rule adoption pursuant to the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (3 points each);

(E) state or federal government or administrative actions as follows:

1. involvement in actions that are considered, pursuant to the Florida Administrative Procedure Act or the Federal Administrative Procedure Act, to provide a point of entry or otherwise create an opportunity for a person to seek to adjudicate legal rights in state or federal courts, or in an administrative forum. Examples may include, but are not limited to, policies, orders, emergency orders, permits, licenses, contracts, or other agency decisions, or intended decisions of state and federal government entities. Examples may not include documents requiring merely clerical completion (2 points each);

2. involvement as lead advocate in an administrative proceeding of the type identified herein, in which a written settlement agreement was negotiated and upon which the proceeding was terminated (2 points each);

3. involvement as lead advocate in an administrative proceeding of the type identified herein, in which a proposed administrative or government action or the challenge to the action was formally withdrawn (2 points each);

(F) other actions on behalf of state or federal government agencies, including military adjudicatory or rulemaking proceedings, that are the substantial equivalent of the practical experience categories identified herein, as determined at the sole discretion of the state and federal government and administrative practice certification committee after review of the application (1 to 4 points each);

(G) an advisory opinion issued by the Florida Commission on Ethics, Florida or United States Attorney General, or Supreme Court of Florida (1 point each);

(H) experience as legislative staff on a bill passed by the Florida Legislature and enacted into law within Chapters 119 (Public Records), 120 (Administrative Procedure Act), 286 (Open Meetings), or 287 (Procurement), Florida Statutes, or as staff for the Florida Legislature's Joint Administrative Procedures Committee on completed rulemaking initiatives (1 point each); or

(I) experience as judicial staff, or staff to an administrative law judge, arbitrator, hearing officer, or other administrative panel on fully-adjudicated cases consistent with this rule (1 point each).

The applicant may have a maximum of 40 points from examples within (F) through (I). If the applicant has no points within (A), (B), or (C), the applicant must have points from a minimum of 2 different categories within (D) through (I). The state and federal government and administrative practice certification committee may increase the number of points granted for activities of the type identified in subdivisions (b)(2)(A), (B), or (C), above, for good cause shown, such as an applicant's involvement as lead advocate in an administrative hearing that lasted more than 6 days.

**(c) Peer Review.** The applicant shall submit the names and addresses of 5 individuals, at least 4 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the 5 years immediately preceding application. Individuals who currently practice in the applicant's law firm or government entity may not be used as references. In lieu of a judicial reference, the applicant may provide the name and address of the head of a government entity (or a member of a collegial board that serves as the head of a government entity) if the applicant has advised or appeared before the person within the 5 years immediately preceding application. Administrative law judges or hearing officers applying for certification may offer the reference of an attorney who has appeared before them more than once, or, if appropriate, the reference of the chief administrative law judge or hearing officer. In all cases, at least 2 of the attorney references must be members of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of state and federal government and administrative practice, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. The board of legal specialization and education and the state and federal government and administrative practice certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for certification pursuant to this rule and rule 6-3.5(c)(6).

**(d) Education.** The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in state and federal government and administrative practice. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 50 hours for the 3 years immediately preceding the application for certification. Credit for attendance or speaking appearances at continuing legal education seminars shall be given only for programs that are directly related to state and federal government and administrative practice. In addition, the state and federal government and administrative practice certification committee may conclude that the education requirement is satisfied, in part, by 1 or more of the following:

- (1) lecturing at continuing legal education seminars;
- (2) authoring or editing articles or books published in professional periodicals or other professional publications;
- (3) teaching courses directly related to state and federal government and administrative practice at an approved law school or other graduate level program presented by a recognized professional education association;
- (4) completing such home study programs as may be approved by the board of legal specialization and education or the state and federal government and administrative practice certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or



(5) such other methods as may be approved by the board of legal specialization and education and the state and federal government and administrative practice certification committee.

The board of legal specialization and education or the state and federal government and administrative practice certification committee shall establish policies applicable to this rule including but not limited to the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such policies shall provide the hours that shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (1), (2), (3), and (4) above.

**(e) Examination.** The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in state and federal government and administrative practice to justify the representation of special competence to the legal profession and the public.

**(f) Exemption.** An applicant who has been substantially involved in state and federal government and administrative practice for a minimum of 20 years and who otherwise fulfills the standards set forth in rules 6-3.5(d) and 6-25.3(a)-(d), shall be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards and who meet all other requirements for certification.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

#### **6-25.4 RECERTIFICATION**

Recertification shall be pursuant to the following standards:

**(a) Substantial Involvement.** A satisfactory showing, as determined by the board of legal specialization and education and the state and federal government and administrative practice certification committee, of continuous and substantial involvement in state and federal government and administrative practice throughout the period since the last date of certification or recertification. Any applicant who meets the practical experience and education requirements in paragraphs (b) and (c) below is presumed to meet this requirement.

**(b) Practical Experience Requirement.** An applicant seeking recertification must demonstrate involvement as the lead advocate on behalf of a private client or a government entity in state and federal government and administrative practice since certification or the last recertification, totaling at least 10 points as described in rule 6-25.3(b)(2)(A)-(I). For good cause shown, subject to approval by the board of legal specialization and education and the state and federal government and administrative practice certification committee, the 10-point requirement above may be waived for applicants who possess other extraordinary legal experience related to state and federal government and administrative practice. Examples of extraordinary experience may include: service as an administrative law judge; agency general counsel or other senior government attorney with supervisory responsibilities; representation of or membership on a

committee working on substantial matters of state and federal government and administrative practice; and other appropriate legal experience described by the applicant.

**(c) Education.** The applicant must demonstrate completion of at least 90 hours of continuing legal education since the last application for certification or recertification. The continuing legal education hours must logically be expected to enhance the proficiency of attorneys who are board certified in state and federal government and administrative practice. If the applicant has not attained 90 hours of continuing legal education but has attained more than 60 hours during such period, successful passage of the examination given to new applicants shall satisfy the continuing legal education requirements. However, an applicant seeking recertification may also reduce the educational requirements in this subsection to 60 hours by demonstrating involvement as the lead advocate on behalf of a private client or a government entity in state and federal government and administrative practice since certification or the last recertification, totaling at least 25 points as described in rule 6-25.3(b)(2)(A)-(I).

**(d) Peer Review.** The applicant shall submit the names and addresses of 3 individuals, at least 2 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the past 5 years preceding the application. Individuals who currently practice in the applicant's law firm or government entity may not be used as references. In lieu of a judicial reference, the applicant may provide the name and address of the head of a government entity (or a member of a collegial board that serves as the head of a government entity) if the applicant has advised or appeared before the person within the 5 years preceding the application. At least 1 attorney reference must be a member of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of state and federal government and administrative practice, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. The board of legal specialization and education and the state and federal government and administrative practice certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for certification pursuant to this rule and rule 6-3.5(c)(6).

**(e) Waiver of Compliance.** Any applicant for recertification who at the time of application is serving and has served full time for 3 or more years as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel is deemed to meet the recertification criteria.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

### **6-25.5 MANNER OF LISTING AREA OF CERTIFICATION**

A member having received a certificate in state and federal government and administrative practice may list the area in the manner set forth under rule 6-3.9(a) or the listing may be abridged to indicate that the member is board certified in (1) state and federal government practice; or, (2) state and federal administrative practice. A member who is certified pursuant to rule 6-25.3(f) and elects to have his or her listing limited to certification in state and federal

administrative practice shall have been certified with a minimum of 25 total points from examples in rule 6-25.3(b)(2)(A), (B), and (D).

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

## **6-26. STANDARDS FOR BOARD CERTIFICATION IN INTELLECTUAL PROPERTY LAW**

### **6-26.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Intellectual Property Law.” The purpose of the standards is to identify those lawyers who practice intellectual property law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in intellectual property law.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123). Amended and effective October 16, 2015 by Board of Governors.

### **6-26.2 DEFINITIONS**

**(a) Patent Application Prosecution.** “Patent application prosecution” covers the practice of law dealing with patent rights, and covers all aspects of the U. S. Patent Statutes, 35 U.S.C. §§ 1-376, as amended; the Rules of Practice in Patent Cases, 37 C.F.R. §§ 1.1 – 1.997, as amended; the American Inventors Protection Act of 1999, United States Patent and Trademark Office (USPTO) rules of practice, the Manual of Patent Examining Procedure (MPEP), the Patent Cooperation Treaty (as modified by any later court decisions or Official Gazette notices); the Assignment, Recording and Rights of Assignee, 37 C.F.R. §§ 3.1 – 3.85, as amended; the Secrecy of Certain Inventions and Licenses to Export and File Application in Foreign Countries, 37 C.F.R. §§ 5.1 – 5.33, as amended; the Register of Government Interests in Patents, 37 C.F.R. § 3.58, as amended; and Representations of Others before the USPTO, 37 C.F.R. §§ 10.1 – 10.170, as amended, as well as representing clients in proceedings before the USPTO.

(1) A “patent” is a governmental grant derived from the United States Constitution to encourage innovation and a form of protected personal property under federal statute set forth in title 35 of the United States Code that guarantees the holder of a U.S. patent a right to exclude others from making, using, offering to sell, selling, or importing an invention for a statutory period of years.

(2) “Patent matters” consist of the areas of knowledge required of attorneys registered to practice before the USPTO, including: rules, practice, and procedure; understanding how to draft claims and the ability to properly draft claims; knowledge about preparation and prosecution of patent applications based on education in and practical experience in engineering or science; understanding the application of patent laws to that endeavor; preparation of patentability opinions; filing and prosecuting patent applications, interferences, and re-issuances; preparing opinions concerning the validity and/or

infringement of patents; prosecuting patent applications at the USPTO and in foreign jurisdictions; and the re-examination of patents.

**(b) Patent Infringement Litigation.** “Patent infringement litigation” covers the practice of law (including substantive law, evidence, and procedure) dealing with the litigation of patents in federal district courts and appeals to the federal circuit of the United States of America, and includes: Service of Process, 37 C.F.R. §§ 15.1 – 15.3; and Testimony of Employees and the Production of Documents in Legal Proceedings, 37 C.F.R. §§ 15.11 – 15.18. Infringement of a patent is a tort giving rise to a federal cause of action for a form of trespass. The grant of a patent by the USPTO carries with it the presumption of validity, including compliance with federal statutes. Invalidity is a defense to a claim for patent infringement and may be based on a number of factors, including: anticipation; obviousness; derivation; failure to disclose “best mode”; estoppel and laches; ineligible subject matter; lack of utility or operability; lack of enabling disclosure; claim indefiniteness; double patenting; inequitable conduct; violation of antitrust law; and non-infringement.

(1) “Contested matters” shall be defined as hearings before a tribunal or court that are adversarial, evidentiary, and binding in which the applicant has had a senior-level responsibility, and in which the applicant evaluated, handled, and resolved issues of fact and law in a dispute that involved a patent, either by reaching an adjudicated decision or by achieving a settlement before final adjudication or appeal.

(2) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; a tribunal rendered a decision on significant issues of patent law following briefing (e.g., a Markman hearing, a Daubert hearing, etc.); or a tribunal or jury rendered a decision following a trial, or the federal circuit court of appeals rendered a decision following an appeal. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

**(c) Trademark Law.** “Trademark law” covers the practice of law dealing with all aspects of the Trademark Act of 1946 (the “Lanham Act”), as amended, 15 U.S.C. §§ 1051-1127, Trademark Counterfeiting Act of 1984, as amended, 18 U.S.C. § 2320, Tariff Act of 1930, as amended, 19 U.S.C. §§ 1337 and 1526, Chapter 495 of the Florida Statutes, as amended (the “Florida Trademark Law”), and common law principles, including: advising clients as to ownership, registration, transfer, validity, dilution, enforceability, and infringement of trademarks in the state of Florida, the United States and internationally; representing clients in proceedings before the USPTO and the Florida Department of State; and representing clients in proceedings in federal or state courts, or in arbitration, relating to the ownership, registration, licensing, transfer, validity, dilution, enforcement, and infringement of trademarks.

(1) A “trademark” is defined to include trademarks, service marks, certification marks, and collective marks. Each of these forms of marks shall have the meaning given in the Florida Trademark Law, Fla. Stat. § 495.011(1)-(4). A “trademark” is further defined to

include trade dress as that term is used in the Restatement Third, Unfair Competition, Section 16, and domain names as that term is used in the Lanham Act, 15 U.S.C. § 1125(d).

(2) “Contested matters” shall be defined as hearings before a tribunal or court that are adversarial, evidentiary, and binding in which the applicant has had senior-level responsibility, and in which the applicant evaluated, handled, and resolved substantial issues of fact and law in a dispute that involved a trademark, either by reaching an adjudicated decision, or by achieving a settlement before final adjudication or appeal.

(3) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for temporary or preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; a tribunal rendered a decision on significant issues of trademark law following briefing in the USPTO; or a tribunal or jury rendered a decision following a trial. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(4) “Substantive refusal” shall be defined as refusals of trademark applications during ex parte USPTO prosecution under Section 2 of the Lanham Act, 15 U.S.C. § 1052.

**(d) Copyright Law.** “Copyright law” covers the practice of law dealing with the protection of the works of the human intellect (literature, music, art, computer programs, etc.) under the copyright laws of the United States, including: subject matter; ownership; duration; registration; formalities; exclusive rights; transfers and licensing, including the rights and obligations of parties, appropriate terms and conditions in licensing contracts, antitrust and misuse constraints, international licensing considerations; contested matters relating to claims of infringement of copyrights and to disputes regarding the authorship, ownership, licensing, and transfer of copyrighted works, including infringement actions and defenses, remedies, jurisdiction and venue, jury considerations, federal preemption of state law; the Copyright Acts of 1909 and 1976, as amended; recent amendments to copyright law such as the Digital Millennium Copyright Act; and international aspects of copyright, including the Berne convention and other treaties on copyright and related subjects. The primary federal copyright law is contained in Title 17 of the United States Code. Generally, the practices that the copyright law is concerned with involve, but are not limited to, registration, licensing, transfer, and protection of copyrighted works.

(1) “Contested matters” shall be defined as hearings before a tribunal or court that were adversarial, evidentiary, and binding in which the applicant had a senior-level responsibility, and in which the applicant evaluated, handled, and resolved substantial issues of fact and law in a dispute that involved a copyright, either by reaching an adjudicated decision, or by achieving a settlement before final adjudication or appeal.

(2) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for temporary or preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on

a motion for summary judgment; or a tribunal or jury rendered a decision following a trial. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter, however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

**(e) Practice of Law.** The “practice of law” shall be defined as set forth in rule 6-3.5(c)(1) and rule 6-26.3(a).

**(f) Intellectual Property Law Certification Committee.** The intellectual property law certification committee shall consist of 9 members, including a minimum of 3 registered patent attorneys with experience in patent application prosecution, 2 members with experience in patent infringement litigation, 2 members with experience in trademark law, and 2 members with experience in copyright law.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

### **6-26.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of law for at least 5 years immediately preceding the date of application. Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), practicing “patent application prosecution,” as defined in section 6-26.2(a), before the USPTO as a registered patent attorney or registered patent agent shall be deemed to constitute the practice of law for purposes of the 5-year practice requirement.

**(b) Substantial Involvement.** Substantial involvement means at least 30 percent of the applicant’s practice during the 3 years immediately preceding application has been devoted to matters involving intellectual property law.

**(c) Experience.** During the 5 years immediately preceding application, the applicant must comply with the experience requirements in at least 1 of the following categories:

(1) *Patent Application Prosecution.* The applicant must have handled with senior-level responsibility a minimum of 40 patent matters that involved representation of a client. The quality of the applicant’s work and the nature of the issues involved shall be a factor in determining eligibility for certification. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the intellectual property law certification committee, but written or oral supplementation (including copies of work product) may be required. For good cause shown, for satisfaction in part of the 40 patent matters that involved representation of a client, verified substantial involvement in patent matters at a government agency may be considered. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(2) *Patent Infringement Litigation.* The applicant must have handled with senior-level responsibility a minimum of 5 contested matters in litigation or on appeal in which there was

an adjudicated decision. Additionally, applicants shall have devoted a minimum of 800 hours per year to litigation matters generally, at least 300 hours per year of which shall have been devoted to patent infringement litigation; and applicant shall have, within the last 10 years, tried a patent infringement litigation matter to the close of testimony, verdict, or judgment. The applicant shall submit work product samples and a transcript (if available) in each such contested matter. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in patent infringement litigation at a government agency may be considered. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(3) *Trademark Law*. The applicant must have handled with senior-level responsibility either a minimum of 6 contested matters or 25 responses to substantive refusals, or a combination of the 2. Substantive refusals on which the applicant relies shall not have involved merely technical corrections, insignificant matters, or abandonment. The applicant shall submit work product samples and a transcript (if available) in each such contested matter. In addition, applicant must have engaged in at least 300 hours each year in the practice of law in which the applicant has had substantial senior-level participation in legal matters involving trademark law. Three contested matters involving in the aggregate no less than 50 hours of in-session hearing or trial shall satisfy the requirement of 6 contested matters. For good cause shown, for satisfaction in whole or in part of the requirement of 6 contested matters or 25 responses to substantive refusals, verified substantial involvement in a combination of contested matters and responses to substantive refusals shall be considered. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in trademark matters at a government agency may be considered in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(4) *Copyright Law*. The applicant must have handled with senior-level responsibility a minimum of 40 substantive matters that involved representation of a client, with a minimum of 300 hours per year devoted to such matters. The ministerial preparation of a copyright registration is not considered a substantive matter for purposes of certification. The applicant shall submit work product samples and, if the applicant also relies upon participation in contested matters, the applicant shall submit transcripts (if available) in each such contested matter. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in copyright matters at a government agency may be considered in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

**(d) Peer Review.** The applicant shall select and submit the names and addresses of at least 6 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise practice law in an of-counsel relationship with the applicant, to serve as references. Such references will be contacted and requested to attest to the applicant's special competence and substantial involvement in intellectual property law, as well as to the applicant's character, ethics, and reputation for professionalism. Individuals submitted as references shall be substantially involved in intellectual property law and shall be familiar with the applicant's practice. In addition, other attorneys, judges, employees at government agencies, or other

persons likely to be familiar with the applicant may be contacted as deemed necessary by the intellectual property law certification committee and the board of legal specialization and education.

**(e) Education.** The applicant must demonstrate that during the 3-year period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for intellectual property law certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours shall be subject to policies established by the intellectual property law certification committee or the board of legal specialization and education and may be satisfied by participation in 1 or more of the following activities:

(1) attendance at continuing legal education seminars for which intellectual property law certification credit has been approved;

(2) teaching a course in intellectual property law;

(3) participation as a panelist or speaker in a symposium or similar program on intellectual property law;

(4) authorship of a book, chapter, or article on intellectual property law, published in a professional publication or journal;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the intellectual property law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; and

(6) such other methods as may be approved by the board of legal specialization and education and the intellectual property law certification committee.

**(f) Examination.** The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in intellectual property law sufficient to justify certification of special competence to the legal profession and the public. The examination will be comprehensive in scope and each applicant will be required to demonstrate at least some knowledge in each specific subject tested. Applicants, however, will be given the opportunity to emphasize special knowledge in 1 or more specific subject areas.

**(g) Exemption.** An applicant may qualify for an exemption from the examination, or a portion thereof, as follows:

(1) an applicant currently a registered patent attorney in good standing with the USPTO shall not be required to take the section(s) of the examination on topics defined in rule 6-26.2(a), but must demonstrate knowledge of substantive law pertaining to intellectual property;

(2) an applicant currently certified by The Florida Bar in civil trial or business litigation shall not be required to take the section of the examination on the litigation



process, but must demonstrate knowledge of substantive law pertaining to intellectual property;

(3) an applicant who has been substantially involved in intellectual property law for a minimum of 20 years, in accordance with the standards set forth in rule 6-3.5(d), and who can demonstrate compliance with the experience requirements under rule 6 26.3(c), subdivisions (1), (2), (3), or (4) within a 10-year time frame, shall be exempt from the examination if all other requirements for certification are met. This exemption shall be applicable only to those applicants who apply by October 31, 2009.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

### 6-26.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

**(a) Substantial Involvement.** The applicant must show continuous and substantial involvement in matters involving intellectual property law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement shall be made by showing that intellectual property law comprises at least 30 percent of the applicant's practice.

**(b) Experience.** During the 5 years immediately preceding application, the applicant must comply with the experience requirements in at least 1 of the following categories:

(1) *Patent Application Prosecution.* The applicant must have handled with senior-level responsibility a minimum of 30 patent matters that involved representation of a client. For good cause shown, for satisfaction in part of the 30 patent matters, the applicant may provide verified substantial involvement in patent matters at a government agency in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(2) *Patent Infringement Litigation.* The applicant must have handled with senior-level responsibility a minimum of 5 contested matters in litigation or on appeal in which there was an adjudicated decision. The applicant may substitute completion of an approved, multi-day, intensive advocacy-training course where the applicant performed and was satisfactorily critiqued by recognized experts for 2 of the 5 contested matters. For good cause shown, for satisfaction in part of the 5 contested matters, the applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a patent, or may serve as an advocacy instructor in an intellectual property law continuing legal education program in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(3) *Trademark Law.* The applicant must have handled either a minimum of 4 contested matters or 15 responses to substantive refusals of the application. In addition, an applicant must have engaged in at least 300 hours each year in the practice of law in which

the applicant had substantial and direct senior-level participation in legal matters involving trademark law. Two contested matters involving in the aggregate no less than 2 days of in-session hearing or trial shall satisfy the requirement of 4 contested matters. For good cause shown, for satisfaction in whole or in part of the requirements, verified substantial involvement in a combination of contested matters and responses to substantive refusals resulting in allowance in satisfaction of the minimum number of matters shall be considered. The applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a trademark, or may serve as an advocacy instructor in an intellectual property continuing legal education program, in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(4) *Copyright Law.* The applicant must have handled with senior-level responsibility a minimum of 30 matters that involved representation of a client. For good cause shown, for satisfaction in whole or in part of the requirement, the applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a copyright, or may serve as an advocacy instructor in an intellectual property law continuing legal education program in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(c) **Peer Review.** The applicant must submit the names and addresses of at least 3 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise practice law in an of-counsel relationship with the applicant, to serve as references. Such references will be contacted and requested to attest to the applicant's special competence and substantial involvement in intellectual property law, as well as to the applicant's character, ethics, and reputation for professionalism in the practice of law. Individuals submitted as references shall be substantially involved in intellectual property law and shall be familiar with the applicant's practice. In addition, other attorneys, judges, employees at government agencies, or other persons likely to be familiar with the applicant may be contacted as deemed necessary by the intellectual property law certification committee and the board of legal specialization and education.

(d) **Education.** The applicant must have completed at least 50 hours of approved continuing legal education in intellectual property law, in accordance with the standards set forth in rule 6-26.3(e) since the filing of the last application for certification.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123); Amended October 3, 2008 by The Florida Bar Board of Governors, effective October 3, 2008.

## **6-27 STANDARDS FOR BOARD CERTIFICATION IN EDUCATION LAW**

### **RULE 6-27.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Education Law." The purpose of the standards is to identify those lawyers who practice in the area of education law and have the special knowledge, skills, and proficiency, as

well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified in education law.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343). Amended and effective October 16, 2015 by Board of Governors.

## **RULE 6-27.2 DEFINITIONS**

**(a) Education Law.** “Education law” means the practice of law involving the legal rights, responsibilities, procedures, and practices of “educational institutions,” students, personnel employed by or on behalf of educational institutions, and the guardians and parents of students participating in education. The term “education law” shall also mean the practice of law on behalf of public or private clients in matters including, but not limited to: state, federal, and local laws, regulations, and proceedings involving student rights and student discipline; administrative law and rules regulating the operations of schools and education in Florida; charter schools; finance issues involving educational institutions, including bond indebtedness, certificates of participation, impact fees, and educational benefit districts; litigation involving educational institutions, including matters of sovereign immunity, civil rights in educational environments, including the civil rights of students and personnel in education; labor issues involving educational institutions, including standards of professional performance and practices involving personnel employed by or on behalf of educational institutions; private school contract matters and litigation involving private school entities; disability law, including § 504, Individuals With Disabilities Education Act, and the Americans With Disabilities Act; laws of general governance, including the Sunshine Law, Public Records Act, Code of Ethics for Public Officers and Officials, purchasing and bid issues; and construction, land use and development law as these areas relate to educational facilities. The purpose of education law certification is to identify lawyers who, although they may not practice substantially in each of these areas, nonetheless concentrate their practice of law in a wide variety of these categories of law in the educational environment, either on behalf of persons dealing with or receiving educational services, or as practitioners on behalf of educational institutions. “Education law” also includes presiding as an administrative law judge, arbitrator, hearing officer, judge or member of another tribunal or panel over a dispute involving education law issues.

**(b) Educational Institution.** “Educational institution” means any entity, private, public, for-profit or not-for-profit, that has appropriate licensure (or otherwise is legally authorized) as a provider of educational services and instruction, and is primarily devoted to the provision of education and instruction to persons of any age. Without limitation, examples of educational institutions shall be public school boards and school districts, public and private universities, community colleges, private schools, charter schools, and technical or trade schools.

**(c) Lead Attorney.** “Lead attorney” means one serving as the primary attorney, whether as a team leader or alone, working on behalf of either a private party or an educational institution. Service as a supervisor and signatory of legal documents, but without substantial participation in the preparation of those documents, does not constitute service as lead attorney. Service in the role of lead attorney also includes presiding as a judge, administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel hearing or presiding over a dispute involving a matter of education law.

**(d) Practice of Law.** “Practice of law” is defined as set forth in rule 6 3.5(c)(1).

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343).

### **RULE 6-27.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have been engaged in the practice of education law for at least 5 years immediately preceding the date of application. Additionally, the applicant must have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

**(b) Substantial Involvement.** The applicant must demonstrate substantial involvement in the practice of education law during at least 3 of the 5 years immediately preceding the date of application. An applicant who meets the practical experience requirements in subdivision (c) below is presumed to meet this requirement.

**(c) Practical Experience.** The applicant must demonstrate broad, substantial, practical experience in education law by providing examples of service as the lead lawyer on behalf of a private or public client involved in education law issues. Using the point values and limitations assigned below, the applicant’s examples from the following actions must total at least 50 points during the 5 years immediately preceding the date of application. Unless expressly permitted by the standard itself in the following subdivisions, an applicant may only take points under 1 subdivision for each project of work. In cases where a project is subject to points in more than 1 category, and the rule does not expressly allow for points to be earned in more than 1 category, the applicant must elect the category under which the applicant wishes to receive points for the work.

To ensure a diversity of experience and involvement in the area of education law, the applicant cannot count more than the maximum points allowable for each section.

(1) The maximum points allowable for subdivision (1) are 30 points. Each item is worth 5 points or as otherwise indicated:

(A) The applicant participated as lead lawyer in formal or informal administrative hearings in which questions or matters of education law were at issue except student suspension hearings and expulsion hearings that are not appealed to a court adjudicated through final order pursuant to the Florida Administrative Procedure Act, chapter 120, Florida Statutes. The applicant will receive an additional 3 points if the matter is appealed and the appeal is concluded by a court order or decision, or otherwise resolved after the case is fully briefed, the applicant will earn an additional 3 points. The applicant will receive an additional 4 points if the applicant is lead attorney in rulemaking proceedings covered in subdivision (c)(2)(A).

(B) The applicant participated as lead lawyer in other fully adjudicated administrative actions (including any formal arbitration or mediation proceeding) in which questions or matters of education law were at issue including but not limited to labor/employment and rulemaking proceedings pursuant to the Federal Administrative

Procedure Act, 5 U.S.C. §§ 551-559, and any arbitration agreement or federally required proceeding, including record review proceedings, pursuant to 5 U.S.C. §§ 701-706. The applicant will receive an additional 3 points for each matter appealed and concluded by a court or fully briefed to the court before the appeal is concluded. The applicant will receive 4 points for serving as lead lawyer in rule-making proceedings as set forth in subdivision (c)(2)(A) in addition to the points available under this subdivision.

(C) The applicant participated as lead lawyer in fully adjudicated trial court proceedings in state or federal court, in which questions or matters of education law were at issue. The applicant will receive an additional 3 points for each matter appealed and concluded by a court or fully briefed to the court before the appeal is concluded.

(2) The maximum points allowable for subdivision (2) are 32 points. Each item is worth 4 points or as otherwise indicated:

(A) The applicant participated as lead lawyer in rulemaking proceedings through rule adoption pursuant to Florida Administrative Procedure Act, chapter 120, Florida Statutes, involving a question or matter of education law or a rule on behalf of an educational institution.

(B) The applicant participated as lead lawyer in administrative litigation, state or federal court litigation and arbitration resulting in settlement before final adjudication in which substantial questions or issues of education law were presented.

(C) The applicant conducted appeals as lead lawyer in which the applicant either represented an educational institution or a party seeking relief against an educational institution on a question involving education law. Appellate matters that are settled on appeal are included, but only if the applicant as lead lawyer filed at least 1 substantive brief in the appeal, including the appeal of student disciplinary matters pursuant to §120.68, Florida Statutes.

(D) The applicant participated as lead lawyer in complaints in which the applicant prepared a response to, provided services in the investigation of, or negotiated resolution of, complaints filed with state or federal government agencies such as the Equal Employment Opportunity Commission, Office for Civil Rights, or Florida Department of Education.

(3) The maximum points allowable for subdivision (3) are 30 points. Each item is worth 3 points or as otherwise indicated:

(A) The applicant participated in student disciplinary hearings as a hearing officer or as lead lawyer before a hearing officer or an educational institution which were not appealed.

(B) The applicant sought and obtained an advisory opinion from the Florida Commission on Ethics, Florida or United States Attorney General, or the Florida or

United States Department of Education, or any constituent division of those entities on behalf of an educational institution as lead lawyer.

(C) The applicant appeared as lead lawyer for a party or an educational institution before any governmental organization in a formal public meeting (Sunshine Meeting under § 286.011, Florida Statutes), including an appearance before an educational institution as lead lawyer for that entity, involving a question of education law. The applicant will receive points for appearing as lead lawyer representing an educational institution before a local government or the Florida Department of Community Affairs on matters involving land use planning or zoning issues, appearing before a governmental entity or agency to advocate a matter of interest to a public or private client involving a question of education law or a matter of interest to an educational institution, or any other formal appearances before regulatory bodies and authorities involving a question of education law or matters of concern to an educational institution. This subdivision does not apply and the applicant will not receive points when this appearance is in connection with another matter covered by another subdivision or practice for which points are awardable such as appearing before an educational institution in an executive session to discuss pending litigation for which points are awarded under subdivision (c)(1)(C), or appearing in connection with a disciplinary hearing for which points are awardable under subdivision (c)(3)(A).

(D) The applicant participated as a registered lobbyist in support of a rule or law before any governmental authority on a regulation or law involving education, education law, or a matter of concern to an educational institution. Each law or regulation for which the applicant has advocated before an authority constitutes a separate matter of experience for accumulation of these points.

(E) The applicant conducted an investigation as lead lawyer on behalf of an educational institution or represented a party being investigated during an investigation conducted by or on behalf of an educational institution. This includes all internal review procedures and work related to issues involving scientific misconduct, plagiarism, breach of test security, Institutional Review Board meetings, tenure, dismissal from or sanction of employment, and advising managerial staff or the governing body of an educational institution regarding these matters. Likewise, points in this category are awarded for each client involved in any of these types of matters in which the client is or may be adverse to an educational institution.

(F) The applicant served as lead lawyer in an attempt to resolve a matter involving educational law as defined in rule 6-27.2(a), through mediation or other negotiations, prior to the matter being filed in an administrative or judicial tribunal.

(G) The applicant performed internal audits for an educational institution including, but not limited to, assessing wage hour compliance and handbook review.

(4) The maximum points allowable for subdivision (4) are 30 points. Each item is worth 2 points or as otherwise indicated:

(A) Two points will be awarded for each of the following actions on behalf of a client or educational institution involving a question of education law, to the extent the work is not covered by or included in the work under another subdivision of these standards: preparation of an opinion letter regarding a question or matter of education law; preparation of a contract involving educational services, technology, or other matters that will facilitate or allow for the delivery of educational services, or in which an educational institution is a party; preparation of rules of procedure on behalf of an educational institution; the evaluation of a charter school application; the presentation of training addressing an education law topic delivered to district or university staff or lawyers in which continuing legal education credit is awarded to the speaker or attendees; service as legal advisor to the negotiating team of an educational institution through completion of a collective bargaining agreement; or other miscellaneous activities performed as lead lawyer on a discrete and describable education law matter for an educational institution or party and which the committee determines reflects substantial involvement in the practice of education law.

**(d) Verification of Practical Experience Requirements.** The education law certification committee will develop an application form to elicit specific information sufficient to verify the practical experience reported by the applicant. The application will require the applicant to identify case numbers for court and administrative litigation, parties in litigation (using initials with respect to student-identifying matters), the nature of the work performed, the dates on which the work was performed (or a period of time during which it was performed), the identity of any court or tribunal before which the work was performed, the results of the work, and the identity of any opposing lawyer, and any other information the education law certification committee determines is reasonably required for the applicant to submit so that the practice requirements may be verified, subject to the requirement of confidentiality.

**(e) Additional Points.** The education law certification committee or the board of legal specialization and education may increase the number of points granted for activities of the type identified in subdivisions (c)(1)-(2), for good cause shown, such as the significant impact of a particular case on a question of education law.

**(f) Peer Review.** The applicant must submit the names and addresses of 5 individuals, at least 4 of whom are lawyers and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the past 5 years preceding the date of application. In lieu of a judicial reference, the applicant may provide the name and address of the head of an educational institution (or a member of a collegiate body that serves as the head of the educational institution) if the applicant has advised or appeared before that person within the 5-year period preceding the date of application. The lawyer references must be members of The Florida Bar, and may not be persons who practice currently in the applicant's law firm nor employed in the same law department at the same educational institution as the applicant at the time the application is filed. Individuals serving as references must be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of education law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the education law certification committee may authorize references from persons other than lawyers and may also

make additional inquiries to determine the qualifications of an applicant for certification under this rule and rule 6-3.5(c)(6).

**(g) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in education law during the 3-year period immediately preceding the date of application. Credit for attendance or speaking appearances at continuing legal education seminars will be given only for programs that are directly related to education law, including but not limited to, continuing legal education in the areas of civil rights; disability law; legal issues relevant to the governance and operations of educational institutions, including Sunshine law, public records law, and Code of Ethics; government procurement law (including bid protests); government finance; trial practice; administrative law; and labor and employment law. Additionally, the education law certification committee may conclude that the education requirement is satisfied in part by 1 or more of the following:

- (1) lecturing at or serving on the steering committee of continuing legal education seminars;
- (2) authoring or editing articles or books published in professional periodicals or other professional publications on questions of education law;
- (3) teaching courses related to education law at an approved law school or other graduate level program presented by a recognized professional education association;
- (4) completing a home study program approved by the board of legal specialization and education or the education law certification committee subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study; or
- (5) other methods approved by the board of legal specialization and education and the education law certification committee.

The board of legal specialization and education or the education law certification committee must establish standards applicable to this rule, including but not limited to the method of establishing the credit hours applicable to any of the above listed subdivisions.

**(h) Examination.** The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, experience, and professionalism in education law to justify the representation of special competence in education law to the legal profession and the public.

**(i) Exemption.** An applicant who has been substantially involved in education law for a minimum of 20 years and who otherwise fulfills the standards set forth in rules 6-3.5(d) and rules 6-27.3(a)-(g), are exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343). Amended and effective October 6, 2017 by Board of Governors.



## **RULE 6-27.4 RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

**(a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in education law throughout the period since the last date of certification or recertification. An applicant who meets the practical experience and education requirements in (b) below shall be presumed to meet this requirement.

**(b) Practical Experience Requirement.** The applicant must demonstrate involvement as lead attorney on behalf of a private client or educational institution in matters totaling at least 10 points as described in rule 6-27.3(c) above. For good cause shown and at the discretion of the education law certification committee, the 10-point requirement may be waived for applicants who possess other extraordinary legal experience related to matters of education law. Examples of such extraordinary experience may include service as an administrative law judge, general counsel responsibility for an educational institution or other senior attorney experience with supervisory responsibilities on behalf of an educational institution, representation of or membership on a committee working on substantial matters of education law, teaching education law at the college level, and other appropriate legal experience described by the applicant and approved by the education law certification committee.

**(c) Education.** The applicant must demonstrate completion of at least 90 credit hours of approved continuing legal education for education law certification. If the applicant has not attained 90 credit hours of approved continuing legal education for education law certification, but has attained more than 60 hours during such period, successful passage of the examination given to new applicants will satisfy the education requirements. However, an applicant seeking recertification may also reduce the educational requirements in this subdivision to 60 hours by demonstrating involvement as lead attorney on behalf of a private client or an educational institution in matters of education law since certification or the last recertification, totaling at least 25 points as described in rule 6-27.3(c) above.

**(d) Peer Review.** The applicant must submit the names and addresses of 3 individuals, at least 2 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared during the 5-year period immediately preceding the date of application. In lieu of a judicial reference the applicant may provide the name and address of the head of an educational institution (or a member of a collegiate body that serves as the head of the educational institution) under circumstances where the applicant has advised or appeared before such person within the 5-year period immediately preceding the date of application. The attorney references must be members of The Florida Bar in good standing, and may not be members of the applicant's law firm or, if the applicant is employed by an educational institution, the references may not be employed in the same law department at the same educational institution as the applicant at the time the application is filed. Individuals serving as references must be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of education law, as well as the applicant's character,

ethics, and reputation for professionalism. The board of legal specialization and education and the education law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for recertification pursuant to this rule and rule 6-3.5(c)(6).

(e) **Waiver of Compliance.** An applicant for recertification who, at the time of application is serving and has served full time for 3 or more years as an administrative law judge, is deemed to meet the recertification criteria in subdivisions 6-27.4(a) and (b).

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343).

## **6-28. STANDARDS FOR BOARD CERTIFICATION IN ADOPTION LAW**

### **RULE 6-28.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Adoption Law." The purpose of the standards is to identify those lawyers who practice adoption law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in adoption law.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343). Amended and effective October 16, 2015 by Board of Governors.

### **RULE 6-28.2 DEFINITIONS**

(a) **Adoption Law.** "Adoption law" is the practice of law dealing with the complexities and legalities of interstate and intrastate adoption placements, including civil controversies arising from termination of the biological parents' parental rights, the Indian Child Welfare Act, and interstate placements. In addition to the actual adoption placement, "adoption law" includes evaluating, handling, and resolving such controversies prior to the placement of a child for adoption and all post placement proceedings. The practice of adoption law in the state of Florida is generally unique in that decisional, statutory, and procedural laws are specific to this state.

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

(c) **Adoption placements.** "Adoption Placements" for the purpose of these rules of the adoption law certification standards, describes the process of surrendering a child for adoption and creating a legal parental relationship between the child and non-relative adoptive parents within the meaning and intent of Florida Statutes.

(d) **Contested Adoption Proceedings.** "Contested adoption proceedings" for the purpose of these rules the adoption law certification standards, occurs when a litigant contests a proceeding under the Florida Adoption Act to terminate parental rights in furtherance of adoption or an adoption judgement. The proceeding must occur prior to or subsequent to entry of

a final judgment of termination of parental rights in furtherance of adoption, a contested stepparent or relative adoption judgment or an order granting or denying intervention.

**(e) Adoption Appeal.** "Adoption appeal" for the purpose of these rules of the adoption law certification standards, is any appeal of an issue arising under the Florida Adoption Act, whether the issue was presented pre-or-post finalization of the adoption.

**(f) Substantial Involvement.** The applicant must demonstrate, within the 5-year period immediately preceding the date of application, substantial involvement in the placement of minor children for adoption sufficient to demonstrate special competence as an adoption lawyer.

(1) *Adoption Placement.* Substantial involvement in adoption placement includes active participation in interviewing and counseling adoptive parents, providing full disclosure to adoptive parents regarding applicable law and the subject minor child, providing legally mandated disclosure to biological and legal parents, investigating issues necessary to assure a legally stable adoption placement, preparation of pleadings, providing notice to individuals legally entitled to notice, taking consents for adoption, presentation of evidence in termination of parental rights and adoption proceedings, attendance at hearings, preparation of interstate adoption documentation, and drafting and preparation of post-placement communication agreements, and authorizing payment of living and medical expenses.

(2) *Contested Adoption Proceedings or Adoption Appeals.* Substantial involvement in a contested adoption proceeding or adoption appeal requires that the applicant demonstrate responsibility for at least 50 percent of the legal work in preparing and presenting the case for any trial, appeal or evidentiary hearing for disposition by the trier of fact.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343); amended and effective May 20, 2016 by The Florida Bar Board of Governors.

### **RULE 6-28.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have at least 5 years of the actual practice of law, of which at least 40 percent has been spent in active participation in adoption law.

**(b) Substantial Involvement.** The applicant must have continuous and substantial involvement in the field of adoption law. The demonstration of substantial involvement must be made in accordance with this subchapter.

**(c) Minimum Number of Cases.** The applicant must have had substantial involvement in adoption law cases as follows:

(1) *Adoption Placements.* The applicant must have either presided over as a judge or general magistrate, or handled as an advocate, a minimum of 50 adoption placements in which the applicant was substantially involved as defined in this subchapter. All placements must have involved the placement of a minor child with an adoptive family who is not

related to the child within the third degree of consanguinity or is not the minor child's stepparent.

(A) In each of these 50 adoption placements, the applicant must have appeared before the court as the adoption entity, as defined in the Florida Adoption Act, on behalf of the adoptive parents or as the lawyer for the adoption entity.

(B) In each of these 50 adoption placements, the applicant must have been responsible for at least 50% of the legal decisions concerning the minor child's adoption placement, termination of the biological and legal parents' parental rights, and finalization of the adoption.

(C) Adoption Placements and legal proceedings simultaneously undertaken with respect to the same child or sibling group will be deemed collectively as one adoption placement,

(D) Adoption Placements will not include:

(i) the domestication of intercountry adoptions;

(ii) the termination of parental rights under Chapter 39, Florida Statutes; or

(iii) the finalization of an adoption where the applicant was not substantially involved in the placement of the child as set forth in this subchapter or the termination of parental rights under the Florida Adoption Act.

(2) *Contested Adoption Proceedings or Adoption Appeals.* If the applicant does not meet the minimum requirement of 50 adoption placements, the applicant must demonstrate substantial involvement, as defined in this subchapter, in a minimum of 15 contested adoption proceedings or adoption appeals within the 5 years immediately preceding the date of the application. In each of the 15 contested adoption proceedings or adoption appeals, the applicant must demonstrate responsibility for at least 50% of the legal work in preparing and presenting the case when a contested adoption proceeding or adoption appeal meets the following requirements:

(A) *Contested Adoption Proceedings.* Contested adoption proceedings occur when a litigant contests a proceeding under the Florida Adoption Act to terminate parental rights in furtherance of adoption or an adoption judgement. An eligible contested adoption is any adoption proceeding, including but not limited to: a private adoption placement, a contested stepparent or relative adoption, or a proceeding in which the court grants or denies intervention. Contested adoption proceedings are eligible for consideration when:

(i) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement as defined in this subchapter and the ultimate issues are submitted to the trier of fact for final resolution;

(ii) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement and the ultimate issues are resolved with a mediator or by the parties prior to the issues being submitted to the trier of fact for final resolution; or

(iii) the proceeding involves extraordinary, complex contested litigation in which the applicant has substantial involvement and the ultimate issues are resolved with a mediator or by the parties prior to an adversarial evidentiary hearing or trial.

(B) Adoption Appeal. An adoption appeal is any appeal arising under the Florida Adoption Act, whether the issue was presented pre- or post-finalization of the adoption. An adoption appeal is only eligible for consideration when the applicant establishes that the applicant was responsible for a majority of the legal decisions in each matter, including the filing of principal briefs in an appellate case or the filing of petitions or responses in extraordinary writ cases. In all cases, the applicant must specifically identify any co-counsel and demonstrate that the applicant's level of participation was substantial and direct. In support of the application requesting credit for an adoption appeal, the applicant will submit each brief and appropriately redact all identifying information regarding birth and adoptive families. In each of these 15 contested adoption appeals, the applicant must have been responsible for all or at least 50% of the legal decisions in each case. A brief, including an amicus brief, written for different appellate levels (i.e. district court, Supreme Court of Florida and federal courts) may be submitted as a separate appellate case handled by the applicant, but cases arising from a single proceeding may not be counted more than twice. Briefs written for different appellate levels must be substantially different in order to be counted twice.

(3) *Application Requirements.* The applicant meets the substantial involvement requirements by submitting proof of 50 adoption placements or 15 contested adoption proceedings/appeals as required in the adoption law certification standards; or the applicant may submit an application detailing substantial involvement in a combination of adoption placements and contested adoption proceedings/appeals to be considered by the committee as follows:

(A) Each adoption placement, contested adoption proceeding or appeal will be assigned points as set forth below. The applicant must submit a minimum of 100 points for review. Points will be awarded as follows:

(i) Each adoption placement as defined in this subchapter will be assigned 2 points.

(ii) Each contested adoption proceeding as defined in this subchapter will be assigned 6 points.

(iii) Each adoption appeal as defined in this subchapter will be assigned 6 points.

(B) The point system in this subchapter will be used solely to determine whether an applicant has met the minimum combination number of cases.

(C) Cases that involve the same child or sibling group will not be considered for more than 1 adoption placement, contested proceeding or appeal (adoption matter). For good cause shown, the applicant may count cases as 2 adoption matters if the applicant meets the separate substantial involvement requirements for each event. No case involving the same child or sibling group will be counted as more than 2 adoption matters.

(4) *Time.* All qualified adoption placements and contested adoption proceedings must conclude within the required 5-year period, except that an adoption appeal may qualify for consideration after submission of a written brief to the appellate court.

(5) *Guardian Ad Litem.* Service as a guardian ad litem, standing alone, will not constitute substantial involvement.

**(d) Education.** The applicant must demonstrate completion of at least 30 credit hours of approved continuing legal education in the field of adoption law during the 3-year period immediately preceding the date of application. Accreditation of educational hours are subject to policies established by the adoption law certification committee or the board of legal specialization.

**(e) Peer Review.**

(1) The applicant must select and submit names and addresses of 6 lawyers, who neither are relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism. At least 3 of the lawyers must be members of The Florida Bar, with their principal office located in the state of Florida. These lawyers must be involved in adoption law and familiar with the applicant's practice.

(2) The applicant must submit the names and addresses of 2 judges before whom the applicant has appeared on adoption matters within the 2-year period immediately preceding the date of application to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The adoption law certification committee may, at its option, send reference forms to other lawyers and judges.

**(f) Examination.** The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, experience, and professionalism in adoption law to justify the representation of special competence to the legal profession and the public.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343); amended and effective May 20, 2016 by The Florida Bar Board of Governors.

## RULE 6-28.4 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

**(a) Substantial Involvement.** The applicant must have continuous and substantial involvement in the field of adoption law. The applicant must have devoted at least 40 percent of the applicant's practice to adoption law. The demonstration of substantial involvement shall be made in accordance with this subchapter.

**(b) Minimum Number of Cases.** The applicant must have had substantial involvement in adoption law cases as follows:

(1) *Adoption Placements.* The applicant must have either presided over as a judge or general magistrate, or handled as an advocate, a minimum of 30 adoption placements in which the applicant was substantially involved as defined in this subchapter. All placements must have involved the placement of a minor child with an adoptive family who is not related to the child within the third degree of consanguinity or is not the minor child's stepparent.

(A) In each of these 30 adoption placements the applicant must have appeared before the court as the adoption entity, as defined in the Florida Adoption Act, on behalf of the adoptive parents or as the lawyer for the adoption entity.

(B) In each of these 30 adoption placements, the applicant must have been responsible for all or at least 50% of the legal decisions concerning the minor child's adoption placement, termination of the biological and legal parents' parental rights, and finalization of the adoption.

(C) Adoption placements and legal proceedings simultaneously undertaken with respect to the same child or sibling group will be deemed collectively as one adoption placement.

(D) Adoption placements will not include:

(i) the domestication of intercountry adoptions;

(ii) the termination of parental rights under Chapter 39, Florida Statutes; or

(iii) the finalization of an adoption where the applicant was not substantially involved in the placement of the child as set forth in this subchapter or the termination of parental rights under the Florida Adoption Act.

(2) *Contested Adoption Proceedings or Adoption Appeals.* If the applicant does not meet the minimum requirement of 30 adoption placements, the applicant must demonstrate substantial involvement, as defined in this subchapter, in a minimum of 10 contested adoption proceedings or adoption appeals within the 5 years immediately preceding the date of application. In each of these 10 contested adoption proceedings or adoption appeals, the

applicant must demonstrate responsibility for at least 50% of the legal work in preparing and presenting the case when a contested adoption proceeding or adoption appeal meets the following requirements:

(A) **Contested Adoption Proceedings.** Contested adoption proceedings occur when a litigant contests a proceeding under the Florida Adoption Act to terminate parental rights in furtherance of adoption or an adoption judgment. An eligible contested adoption is any adoption proceeding, including but not limited to: a private adoption placement, a contested stepparent or relative adoption, or a proceeding in which the court grants or denies intervention. Contested adoption proceedings are eligible for consideration when:

(i) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement as defined in this subchapter, and the ultimate issues are submitted to the trier of fact for final resolution;

(ii) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement, and the ultimate issues are resolved with a mediator or by the parties prior to the issues being submitted to the trier of fact for final resolution; or

(iii) The proceeding involves extraordinary, complex contested litigation in which the applicant has substantial involvement, and the ultimate issues are resolved with a mediator or by the parties prior to an adversarial evidentiary hearing or trial.

(B) **Adoption Appeal.** An adoption appeal is any appeal arising under the Florida Adoption Act, whether the issue was presented pre- or post-finalization of the adoption. An adoption appeal is only eligible for consideration when the applicant establishes that the applicant was responsible for a majority of the legal decisions in each matter, including the filing of principal briefs in an appellate case or the filing of petitions or responses in extraordinary writ cases. In all cases, the applicant must specifically identify any co-counsel and demonstrate that the applicant's level of participation was substantial and direct. In support of the application requesting credit for an adoption appeal, the applicant will submit each brief and appropriately redact all identifying information regarding birth and adoptive families. In each of these 10 contested adoption appeals, the applicant must have been responsible for all or at least 50% of the legal decisions in each case. A brief, including an amicus brief, written for different appellate levels (i.e. district court, Supreme Court of Florida and federal courts) may be submitted as a separate appellate case handled by the applicant, but cases arising from a single proceeding may not be counted more than twice. Briefs written for different appellate levels must be substantially different in order to be counted twice.

(3) *Application Requirements.* The applicant meets the substantial involvement requirements by submitting proof of 30 adoption placements or 10 contested adoption proceedings/appeals as required in the adoption law certification standards; or the applicant may submit an application detailing his or her substantial involvement in a combination of



adoption placements and contested adoption proceedings/appeals to be considered by the committee as follows:

(A) Each adoption placement, contested adoption proceeding or appeal will be assigned points as set forth below. The applicant must submit a minimum of 60 points for review. Points will be awarded as follows:

(i) Each adoption placement as defined in this subchapter will be assigned 2 points.

(ii) Each contested adoption proceeding as defined in this subchapter will be assigned 6 points.

(iii) Each adoption appeal as defined in this subchapter will be assigned 6 points.

(B) The point system in this subchapter rule will be used solely to determine whether an applicant has met the minimum combination number of cases.

(C) Cases that involve the same child or sibling group will not be considered for more than 1 adoption placement, contested proceeding or appeal (adoption matter). For good cause shown, the applicant may count cases as 2 adoption matters if the applicant meets the separate substantial involvement requirements for each event. No case involving the same child or sibling group will be counted as more than 2 adoption matters.

(4) *Time.* All qualified adoption placements and contested adoption proceedings must conclude within the required 5-year period, except that an adoption appeal may qualify for consideration after submission of a written brief to the appellate court.

(5) *Guardian Ad Litem.* Service as a guardian ad litem, standing alone, will not constitute substantial involvement.

(6) *Waiver.* The adoption law certification committee may waive the minimum number of cases for an applicant who has been continuously board certified in adoption law under these standards for a period of 14 years or more.

**(c) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in the field of adoption law. The continuing legal education must enhance the proficiency of lawyers who are board certified adoption lawyers.

**(d) Peer Review.**

(1) The applicant must submit the names and addresses of 3 lawyers, who neither are relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must be involved in adoption law and familiar with the applicant's practice.

(2) The applicant must submit the names and addresses of at least 2 judges before whom the applicant has appeared on adoption matters within the 2-year period immediately preceding the date of application to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The adoption law certification committee may, at its option, send reference forms to other lawyers and judges.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343); amended and effective May 20, 2016 by The Florida Bar Board of Governors.

## **6-29. STANDARDS FOR BOARD CERTIFICATION IN JUVENILE LAW**

### **RULE 6-29.1 GENERALLY**

A lawyer who is an active member in good standing of The Florida Bar and who meets the standards prescribed below may be issued a certificate identifying the lawyer as "Board Certified in Juvenile Law." The purpose of the standards is to identify those lawyers who practice juvenile law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in juvenile law.

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

### **RULE 6-29.2 DEFINITIONS**

**(a) Juvenile Law.** "Juvenile law" is the area of law that inherently and directly impacts children. It includes, but is not limited to, dependency, delinquency, and termination of parental rights matters. It does not include adoption matters or matters arising in the context of family law proceedings not consolidated with dependency or termination of parental rights matters.

**(b) Trial.** A "trial" is defined as substantially preparing a case for court, offering testimony or evidence, or cross-examination of witness(es), in an adversarial proceeding before a trier of fact, and submission of a case to the trier of fact for determination of the matter.

**(c) Appellate proceeding.** An "appellate proceeding" is defined as an action in a state or federal court seeking review of a decision of a lower tribunal.

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

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

### **RULE 6-29.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have been substantially engaged in the practice of law for at least 5 years immediately preceding the application date.

**(b) Practice Requirements.** The practice requirements are as follows:

(1) *Substantial Involvement.* The applicant must demonstrate substantial involvement in the practice of juvenile law during 3 of the last 5 years, immediately preceding application.

(2) *Practical Experience.* The applicant must demonstrate substantial practical experience in juvenile law by providing examples of service as the lead advocate on behalf of a governmental entity, a child, a parent, a guardian, a foster parent, or a child's relative with standing to litigate, in a minimum of 20 fully adjudicated trials or appellate proceedings arising from petitions for dependency, termination of parental rights, or delinquency. If at least 10 of the trials or appeals required by this provision occurred during the 5 years immediately preceding application, the requirements of rule 6-29.3(b)(1) are met.

(3) *Other Experience.* On good cause shown, the juvenile law certification committee may substitute other experience in juvenile law as defined for the portion of the trials or appellate proceedings as it deems appropriate. This experience may include, but is not limited to:

(A) handling school issues, including disciplinary issues and educational planning matters, participating in placement determinations, and the development of treatment and alternative plans;

(B) dealing with matters relating to governmental benefits;

(C) advocacy after termination of parental rights;

(D) advocacy before the Florida Department of Children and Families or other agencies;

(E) advocacy in juvenile delinquency matters other than trial or appellate proceedings;

(F) representation at administrative proceedings; and

(G) resolving health care matters.

**(c) Peer Review.**

(1) The applicant must submit the names and addresses of 6 lawyers, who are neither relatives nor current associates or partners nor who practice in the same governmental entity as the applicant. At least 4 of the references must be members of The Florida Bar. Individuals serving as references must have experience in juvenile law and be sufficiently familiar with the applicant to attest to the applicant's special competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law.

(2) The applicant must submit the name and address of 1 judge before whom the applicant has appeared in a juvenile law matter within the 5-year period immediately preceding application to attest to the applicant's competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The board of legal specialization and education and the juvenile law certification committee may authorize references from persons other than lawyers and may also make additional inquiries it deems appropriate to determine the applicant's qualifications for certification.

**(d) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in juvenile law during the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the juvenile law certification committee or the board of legal specialization and education.

**(e) Examination.** The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, proficiency, experience, and professionalism in juvenile law to justify the representation of special competence to the legal profession and the public.

**(f) Exemption.** An applicant who meets the standards set forth in subdivisions (a) - (d) of this rule and those of rule 6-3.5(d) are exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

### **RULE 6-29.4 RECERTIFICATION**

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

**(a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in juvenile law throughout the period since the last date of certification or recertification.

**(b) Trials or Appellate Actions.** The applicant must have had sole or primary responsibility in at least 10 trials or appellate actions involving juvenile law. When primary responsibility is used to meet this requirement, the applicant must specifically identify any co-counsel and demonstrate to the satisfaction of the juvenile law certification committee that the applicant's level of participation was substantial and direct. On good cause shown, the juvenile law certification committee may substitute other experience for any portion of the trials or appellate proceedings it deems appropriate. This experience may include, but is not limited to, the matters set forth in Rule 6-29.3(b)(3). Compliance with this provision constitutes a prima facie showing of compliance with the requirements of rule 6-29.4(a).

(c) **Education.** The applicant must demonstrate completion of at least 50 credit hours of approved continuing legal education in juvenile law certification. Accreditation of educational hours is subject to policies established by the juvenile law certification committee or the board of legal specialization and education.

**(d) Peer Review.**

(1) The applicant must submit the names and address of at least 4 lawyers who are neither relatives nor current associates or partners nor who practice in the same governmental entity as the applicant, as references to attest to the applicant's substantial involvement and competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must have experience in juvenile law and be familiar with the applicant's practice.

(2) The applicant must submit the name and address of at least 1 judge before whom the applicant has appeared within the last 5 years to attest to the applicant's competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The juvenile law certification committee may, at its option, send reference forms to other lawyers and judges, as well as any other person the committee deems appropriate.

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

**6-30 STANDARDS FOR BOARD CERTIFICATION IN CONDOMINIUM AND  
PLANNED DEVELOPMENT LAW  
RULE 6-30.1 GENERALLY**

A lawyer who is an active member in good standing of The Florida Bar and meets the standards prescribed below may be issued a certificate identifying the lawyer as "Board Certified in Condominium and Planned Development Law." The purpose of the standards is to identify lawyers who:

(a) practice law in the development of common interest real property, and the formation, representation, and regulation of community associations;

(b) have the special knowledge, skills, and proficiency; and

(c) the character, ethics, and reputation for professionalism to be identified to the public as board certified in condominium and planned development law.

New subchapter added January 21, 2016; effective March 21, 2016.

**RULE 6-30.2 DEFINITIONS**

(a) **Community Association and Planned Development.** A "community association" is a corporation for profit or not-for-profit that is engaged in the management and operation of common interest real property, which typically includes:

- (1) associations for condominiums, homeowners, property owners, and mobile homes;
- (2) associations governing communities or properties which may be related to residential, commercial, other non-residential communities or properties;
- (3) cooperatives;
- (4) recreational organizations such as golf or tennis clubs; and
- (5) voluntary organizations that are incorporated or not incorporated.

A “planned development” is real property in Florida that consists of or will consist of separately owned areas, lots, parcels, units, or interests together with common or shared elements or interests in real property, or where the separately owned areas, lots, parcels, units, or interests are subject to common restrictive covenants or are governed by a community association.

**(b) Condominium and Planned Development Law.** “Condominium and planned development law” is the practice of law that involves:

- (1) serving as counsel to community associations, property owners, community association members, sellers, purchasers, developers, lenders, governmental agencies, and investors in matters related to community associations and planned developments;
- (2) drafting governing documents or their amendments, and preparing filings with governmental agencies that regulate community associations or planned developments;
- (3) serving in or for governmental agencies which regulate community associations or planned developments;
- (4) representing parties in construction lien and defect claims, collection of assessment actions, governing document and community association statutory enforcement and dispute actions, and other litigation, arbitration, and mediation in matters relating to community associations or planned developments; and
- (5) planning, development, construction, and financing of condominium or planned development communities.

**(c) Practice of Law.** The “practice of law” for this area is set out in rule 6-3.5(c)(1).

New subchapter added January 21, 2016; effective March 21, 2016.

### **RULE 6-30.3 MINIMUM STANDARDS**

**(a) Minimum Period of Practice.** The applicant must have been engaged in the practice of condominium and planned development law for at least 5 years immediately preceding the date of application.

**(b) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in the practice of law, of which at least 40 percent has been spent in active participation in condominium and planned development law during at least 3 of the 5 years immediately preceding the date of application.

**(c) Practical Experience.** The applicant must demonstrate substantial practical experience in condominium and planned development law by providing examples of at least 20 substantive tasks or services performed on behalf of, or in connection with, community associations and planned developments, such as:

(1) drafting, reviewing, interpreting, or revising development and governing documents, title instruments and reports, title insurance policies, contracts for sale and purchase, and statutory and administrative laws, rules, and provisions;

(2) drafting financing instruments for developers, lenders, investors, or community associations;

(3) planning and drafting project legal structures and entities;

(4) dealing with development funds and associated development documents;

(5) drafting other project related documents;

(6) serving as an arbitrator or counsel for a party in an arbitration;

(7) serving as a mediator or counsel for a party in a mediation;

(8) drafting opinion letters;

(9) serving as legal counsel at a trial, on appeal, or in administrative hearings;

(10) representing owners, purchasers, developers, lenders, investors, community associations, governmental agencies, or political subdivisions in matters relating to condominium and planned development law; or

(11) any other activity deemed appropriate by the condominium and planned development law certification committee.

The applicant must also describe, through examples or narrative, the applicant's law practice of representing community associations, developers, lenders, investors, or owners in matters involving condominium and planned development law during the 5-year period preceding the date of application. The examples or narrative must include the approximate number and type of clients the applicant has represented during the 5-year period. Consideration will be given to applicants who have served as in-house counsel or who have been employed by governmental agencies.

**(d) Peer Review.** The applicant must submit the names and addresses of 5 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's

substantial involvement, practical experience, and competence in condominium and planned development law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 4 of the 5 references must be lawyers or judges and at least 3 of the lawyer references must be members of The Florida Bar. The condominium and planned development law certification committee may, at its option, send reference forms to other lawyers and judges.

**(e) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in condominium and planned development law during the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the condominium and planned development law certification committee or the board of legal specialization and education.

**(f) Examination.** The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, and experience in condominium and planned development law to justify the representation of special competence to the legal profession and the public.

**(g) Exemption.** An applicant who has been substantially involved in condominium and planned development law for a minimum of 20 years, and who otherwise fulfills the standards under rule 6-30.3(c)–(e), will be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added January 21, 2016; effective March 21, 2016.

#### **RULE 6-30.4 RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must satisfy the following requirements for recertification:

**(a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in condominium and planned development law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement must show that condominium and planned development law comprises at least 40 percent of the applicant's practice.

**(b) Practical Experience.** The applicant must demonstrate continued compliance with the requirements of rule 6-30.3(c).

**(c) Education.** The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in condominium and planned development law, in accordance with the standards set forth in rule 6-30.3(e).

**(d) Peer Review.** The applicant must submit the names and addresses of at least 3 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in condominium



and planned development law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 2 of the 3 references must be lawyers or judges, and at least 1 must be a member of The Florida Bar. The condominium and planned development law certification committee may, at its option, send reference forms to other lawyers and judges.

New subchapter added January 21, 2016; effective March 21, 2016.