

CLIENT ALERT

National Court Reporters Association Faces Antitrust Lawsuit

In December 2024, two members of the National Court Reporters Association (“NCRA”) filed a class action lawsuit against their own organization alleging that it had violated antitrust law by charging arbitrarily high dues and deliberately kept competitors out of the certification market. The case, currently pending before a federal district court in New Jersey, carries important lessons for proactive antitrust compliance.

Background

A new antitrust lawsuit filed in New Jersey federal court alleges that NCRA maintains a monopoly in the stenographic certification market, which it uses to charge members arbitrarily high dues and keep competitors out of the market. The case, filed by two members of the association as a class action, alleges that the NCRA maintains what’s referred to as a “tying” arrangement which in effect forces members to pay membership dues in exchange for maintaining their NCRA certification. The case has been filed in the U.S. District Court for the District of New Jersey.

Because the NCRA certification is either required or accepted in 95 percent of jurisdictions, and because state court reporter associations do not offer certifications, requiring NCRA membership in order to achieve and maintain NCRA certification amounts to what the suit alleges is an unlawful restraint of the members’ freedom in the marketplace. NCRA’s President Keith R. Lemons released a statement on January 7 characterizing the case as “frivolous and without merit.”

Doesn’t the NCRA have a right to limit certification to members only and charge dues as it sees fit?

Generally, it is true that courts will not interfere with an association’s internal management absent extraordinary circumstances. The way in which an association chooses to offer its services and administer its dues, in most cases, will receive little if any interference from the courts. However, there are notable exceptions, including when association membership is vital to the ability of individuals or companies to practice their profession or remain in business .

The broad deference accorded to associations in the management of their internal affairs is typically not available when the core allegation is of an antitrust violation, as is the case here. The case alleges that NCRA has created a monopoly in the certification market for stenographers, using its relatively dominant position to require membership as a condition of that

certification and charge arbitrarily inflated fees which serve “no purpose,” according to the complaint.

What are the odds that NCRA’s compelled membership requirement violates antitrust law?

This case builds on a similar theory raised in a case filed last year against the National Association of Realtors. That case, filed against NAR by the Department of Justice, alleged that the association enforced a series of rules that illegally restricted the ways that realtors compete in the marketplace. NAR ultimately entered a \$418 million settlement regarding the allegations. Central to the complaint was the allegation that NAR’s dominance of the real estate market was so stark that it could essentially dictate rules of behavior to its members, particularly with regard to commission fees.

In some sense, this newest antitrust case follows in that pattern: it again alleges that an association, here NCRA, has risen to a position in the market for certified court reporter services that is so dominant it can effectively require that all court reporters must join NCRA and then arbitrarily raise membership dues, with all court reporters seemingly having no professional choice but to comply. What’s less clear is whether the success of the NAR suit in obtaining a settlement portends success for the NCRA plaintiffs. Their claims are, admittedly, much narrower than those presented in the NAR case, and it’s unclear whether an allegation of compelled membership combined with artificially inflated membership dues constitute an antitrust violation .

What does this mean for associations?

Associations of course are central to various certifications across a wide variety of professions and trades. *This activity of course remains generally legal under the antitrust laws. However,* the filing of this case demonstrates a growing trend in antitrust litigation of actions which allege an association is exercising monopolistic power with respect to its dominance of a particular certification “market”, particularly if membership in the association is required in order to achieve and maintain certified status

How does the changing administration affect the outlook for antitrust litigation?

This NCRA litigation is a private lawsuit based on a well-established antitrust principles, and therefore the change in Administrations should not have an impact. More broadly, the Biden Administration has pursued an aggressive and expansive antitrust strategy. The Trump Administration is expected to take a more moderate approach.

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