IN THE SUPREME COURT OF FLORIDA

IN RE: CASE NO. SC21-284

AMENDMENT TO RULE
REGULATING THE FLORIDA BAR 6-10.3

_____/

COMMENT BY THE ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

The Association of Professional Responsibility Lawyers ("APRL") is an organization with approximately 400 members in more than 40 states and the District of Columbia as well as non-U.S. jurisdictions. Its membership includes lawyers who represent other lawyers (and sometimes other lawyers' clients) in all aspects of legal ethics, lawyer discipline and other professional responsibility issues. In addition, its members advise lawyers and law firms on risk management, legal malpractice, and other aspects of the law of lawyering. APRL also has academics and judges as members. It is the largest organization of private practitioners devoted exclusively to this area of the law. It also issues public statements and files *amicus* briefs in federal and state courts.

APRL submits this comment in response to the invitation ofthe Court in its April 15, 2021 Order in this case.

As revised, Rule 6-10.3(d) of the Rules Regulating the Florida Bar ("Minimum Continuing Legal Education Standards"), prohibits the Bar's Board of Specialization and Education from approving for CLE credit attendance at any program that "uses quotas" in the designation of speakers. APRL urges the Court to reconsider and rescind its revision to the rule. We do so for the following reasons.

First, for any Florida licensed lawyer seeking CLE credit, the new rule excludes a large, and growing, number of worthy CLE programs both in and outside of Florida. And it does so solely because the organizers of a particular program have elected to follow diversity guidelines. Worse yet, the rule effectively puts the onus on each Florida lawyer to determine whether the composition of the speaking panel at a CLE program under consideration "uses quotas" within the meaning of the rule.

Second, whether intended or not, the rule plainly will have the effect of discouraging organizers of CLE programs, both in Florida and throughout the country, from recruiting speakers for CLE presentations from diverse backgrounds. In turn, this will have the

effect of undermining what APRL deems to be an extremely worthy professional responsibility goal: expanding the inclusion in CLE presentations of lawyers from groups historically excluded from participation in bar-related activities. Not only is that goal important in itself but speaking on panels is an important aspect of becoming recognized by others as an expert in a field. To the extent that we as a profession maintain these mandatory continuing education rules, we should give people from historically excluded groups opportunities to credential themselves as experts.

Third, an "anti-quota" CLE rule does not promote or even impact the primary goal of CLE programs—to provide lawyers with quality programs to maintain competence and keep abreast of recent developments in the law. There is no evidence nor even a suggestion by this Court that the quality of CLE programs or their intended purpose would be adversely affected by a "diversity quota." By contrast, a more diverse panel has the potential to appeal to a broader audience, which would drive the goal of encouraging participation in CLE programs and ideally expanding interest in bar organizations at a time when membership is on the decline everywhere.

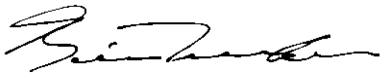
Finally, it is true that many bar organizations, including APRL, attempt to meet the goal of inclusion and diversity in the designation of CLE speakers through informal guidelines that are aspirational rather than mandatory. However, an increasing number of Bar groups have concluded that such aspirational methods have failed to accomplish the desired goal of eliminating bias and of enhancing diversity in the legal profession. See the attached letter from former ABA President Paulette Brown acknowledging progress in achieving diversity, but also that the ABA's aspirational or voluntary diversity policy fell short of achieving complete and proportional representation of diverse faculty at CLE programs[1].

For these reasons, APRL urges this Court to reconsider, and on reconsideration to rescind, its April 15 revision to Rule 6-10.3.

---

[1] The attachment of Ms. Brown's letter is not meant to imply her support of this comment and is provided only for background.

Respectfully submitted,

By: 

BRIAN L. TANNEBAUM
Florida Bar No.: 47880

BRIAN L. TANNEBAUM, P.A.
One Southeast Third Avenue
Suite 1400
Miami Florida 33131
Tel: (305) 374-7850
btannebaum@tannebaum.com

As APRL Member and on
behalf of APRL President
Shannon Nordstrom, and
the APRL Board of Directors

Paulette Brown
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5109
Fax: (312) 988-5100
abapresident@americanbar.org

Dear Chair:

On Saturday June 11, 2016, the Board of Governors approved an enhancement of the ABA's CLE Policy. As you are no doubt aware, for numerous years, the ABA had an aspirational policy which provided that all entities of the ABA, when sponsoring or co-sponsoring a program, would have diversity on its panels.

Over the years, many entities have made great efforts and strides in that regard, and have been models for success. Unfortunately, there are some entities that sponsor or co-sponsor panels which do not include diverse members of our profession. This failure to comply stands in the way of fulfilling one of the ABA's four goals - to promote full and equal participation in our association, profession, and justice system by women, racial and ethnic minorities, persons with disabilities, and persons of differing sexual orientations and gender identities. We believe all ABA entities can be successful in this regard. As leaders in the legal profession, we know we cannot be successful and our Association cannot grow if we are not inclusive of all people.

For the past several months, we have been working to enhance the ABA's CLE policy in a manner that strengthens our Association's commitment to Goal III without imposing an undue hardship on ABA entities' ability to sponsor or co-sponsor top quality CLE programs. In fact, most entities will not be impacted by the policy. We have considered numerous inputs from SOC and they were important factors. Several were incorporated in the ultimate policy that was adopted. The final policy is attached.

There are a couple of provisions worth noting. If an entity believes it is impossible to comply with the policy, an application for an exception can be made. Additionally, if your program or panel has already received CLE credit because it includes diversity, in the event of an emergency (e.g. a snow storm preventing attendance of the individual or individuals representing diversity on your panel), absent fraud, that panel will still be granted CLE credit. Put another way, CLE approval will not be withdrawn. Finally, this policy becomes effective March 1, 2017. It is not a retroactive policy. The policy only applies to programs and panels where the planning process begins on or after March 2017. Thus, if there is a program or panel that has already been planned and that is scheduled for a time after March 2017, the mandatory provisions of the policy do not apply.

We want to make compliance as easy as possible and the Goal III entities stand ready to assist you with finding speakers should the need arise. You will receive further information and

advance notice on specific details concerning the administration of this enhanced CLE policy. Should you have any questions, please feel free to contact me.

Best regards,

Paulette Brown