

IN THE
Supreme Court of Florida

Case No.: SC21-284

IN RE: AMENDMENT TO RULE
REGULATING THE FLORIDA BAR 6-10.3.

COMMENTS OF ATTORNEY BRANDON PETERS

On April 15, 2021, this court amended rule 6-10.3(d) of the Rules Regulating the Florida Bar on its own motion and in response to a new continuing legal education (“CLE”) policy adopted by the Bar’s Business Law Section. Neither the court’s opinion nor the amended rule mentions the American Bar Association (“ABA”). Without providing this commenter prior notice or opportunity to be heard, employees of The Florida Bar have interpreted and applied the court’s order and rule modification in a manner that creates an unnecessary burden and deprives this commenter of the full economic value of his 2021 investments in CLE courses offered by the ABA. U.S. Const. amend. XIV, § 1; U.S. Const. art. I, § 10.

The operative facts forming the basis of these comments are as follows:

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- This commenter has been an active member of The Florida Bar in good standing since 1992.
- According to a public statement attributed to the director of programs for The Florida Bar, the CLE policy adopted by the Business Law Section is similar to a policy followed by the ABA. See <https://www.floridabar.org/the-florida-bar-news/supreme-court-taking-comments-on-new-cle-rule/>.
- This commenter was not a member of the ABA when it adopted its CLE policy in 2017 nor a member of the Business Law Section at the time it adopted its policy. Likewise, this commenter was not involved in either the Business Law Section's adoption of its CLE policy or the ABA's decision to announce its purported policy four years ago.
- Like all Florida Bar members, this commenter must complete certain CLE requirements to maintain active status as a practicing attorney.
- In years past, this commenter took CLE courses offered by the ABA and received CLE credit for those courses from The Florida Bar.

- The current ABA membership dues year began on February 1, 2021 and will end on January 31, 2022.
- On March 20, 2020, this commenter paid \$150.00 to become a member of the ABA to have access to the ABA's numerous, free or low-cost, online CLE courses.
- On March 24, 2021, this commenter paid the member-discounted rate of \$75.00 to the ABA so he could attend various CLE courses being offered during the ABA Virtual Litigation Section Annual Conference scheduled for the afternoons of May 5 - 7, 2021.
- On March 31, 2021, this commenter attended an ABA CLE course entitled "Avoiding Ethical Pitfalls in ADR" and applied to The Florida Bar to receive CLE credit for doing so.
- On April 13, 2021, this commenter attended an ABA CLE course entitled "Estate Planning for the Dysfunctional Adult Child" and applied to The Florida Bar to receive CLE credit for doing so.
- On April 22, 2021, this commenter received 1.0 hour of Ethics CLE credit from The Florida Bar for attending the March 31 ABA CLE course entitled "Avoiding Ethical Pitfalls in ADR."

- On May 3, 2021, this commenter attended an ABA CLE course entitled “Leadership Lessons for Lawyers” and applied to The Florida Bar to receive CLE credit for doing so. The May 3 course was taught by a single instructor, the Executive Director of the ABA - Jack Rimes, a white, male, retired USAF Lieutenant General.
- From May 5 - 7, 2021, this commenter attended nine live CLE courses offered during the ABA Virtual Litigation Section Annual Conference and applied to The Florida Bar to receive 11.0 hours of CLE credit for doing so.
- On May 6, 2021, this commenter attended a CLE course offered as part of the ABA’s Well-Being Week in Law Series entitled “Next Level Diversity: Why ‘Belonging’ is What Attorneys Really Want” and applied to The Florida Bar to receive CLE credit for doing so.
- On May 11, 2021, this commenter received 1.0 hour of General CLE credit from The Florida Bar for attending the April 13 ABA CLE course entitled “Estate Planning for the Dysfunctional Adult Child.”

- On May 27, 2021, this commenter received an email from The Florida Bar in response to his request to receive CLE credit for attending the ABA's May 6 CLE course entitled "Next Level Diversity: Why 'Belonging' is What Attorneys Really Want." That email stated as follows:

Thank you for submitting your request for CLE credits for course approval. Because of the Florida Supreme Court amendment to Rule 6-10.3(d), The Florida Bar will not approve courses, lecture credit, or attendance credit requests from sponsoring organizations who have a CLE Diversity & Inclusion Policy that uses quotas. We apologize for any inconvenience this may cause.

This is the first time The Florida Bar has denied CLE credit to this commenter during his 28 years of practicing law in the state of Florida.

- Because the court's April 15 opinion does not mention CLE courses offered by the ABA, this commenter replied to the Bar's May 27 email on that same date as follows:

Thanks for getting back to me.

I am trying to understand what you mean. What is the organization that has quotas? What quota does the organization have that causes a problem for The Florida Bar?

I just want to be sure I grasp the nature of the issue so I don't enroll in future CLE opportunities that generate zero credits.

Please advise.

- As of the date of this filing, The Florida Bar has not responded to this commenter's May 27 inquiries regarding the Bar's denial of credit for this his attendance at the ABA's May 6 CLE course. This commenter is still unclear about the nexus between the court's amended rule and any CLE course he paid to take through the ABA.
- On June 18, 2021, this commenter received an email from The Florida Bar in response to his request to receive CLE credit for attending the ABA's May 3 CLE course entitled "Leadership Lessons for Lawyers." That email stated as follows:

Thank you for submitting your credits for course approval. Because of the Florida Supreme Court amendment to Rule 6-10.3(d), The Florida Bar will not be able to approve courses, lecture credit, or attendance credit applications for CLE Accreditation from sponsoring organizations who have a CLE Diversity & Inclusion Policy that uses quotas. We apologize for any inconvenience this may cause.

- Because the court's April 15 opinion does not mention CLE courses offered by the ABA, this commenter replied to the Bar's June 18 email on that same date as follows:

I appreciate your getting back to me.

I am trying to interpret your application of the new Bar rule.

Would you please try to clear up some confusion regarding amended Rule 6-3.10(d) [sic]? Specifically, I am trying to understand why The Florida Bar believes this course was subject to the ABA's CLE diversity policy when there was only one instructor teaching it.

Thanks in advance for your help.

- On June 21, 2021, The Florida Bar replied to this commenter's June 18 email as follows:

I believe the article linked below may be helpful.

<https://www.floridabar.org/the-florida-bar-news/supreme-court-taking-comments-on-new-cle-rule/>

- This commenter read the recommended article several times before responding to the Bar on June 22, 2021 as follows:

Thanks for referring me to that article. Unfortunately, after reading it, I am even more unclear about the meaning and application of the new Bar rule.

I will provide some comments to the Florida Supreme Court in the hope that the Justices can address some of the confusion created by their amendment to 6-10.3.

- As of the date of this filing, The Florida Bar has not responded further to this commenter's June 22 email regarding the meaning of amended Rule 6-10.3 or the Bar staff's application

of the rule to this commenter's attendance at the ABA's May 3 CLE course.

- As of the date of this filing, The Florida Bar has never responded to this commenter's requests for CLE credit for various ABA courses he attended on May 5, 6 and 7, 2021.
- Both the Bar's denial of this commenter's requests for ABA-sponsored CLE credit and the uncertainty shrouding his still pending requests for credit have created hardships for this commenter by nullifying or risking nullification of his 2021 investments of time and money to attend courses for which he has received CLE credit from the Bar in the past.

Because this commenter did not receive prior notice and opportunity to be heard, the Bar's refusal to award him CLE credit for ABA courses he paid for and took in good faith is unjust. To this date, the court has not notified members of The Florida Bar of any concerns the court has about a particular CLE policy of the ABA. Moreover, the court's April 15 order does not prohibit the award of Florida CLE credit to lawyers who took an ABA CLE course taught by a single instructor, as was the case when this commenter took a CLE course from the ABA on May 3. In such situations, according to the ABA's CLE policy, no diversity quota applies.

The Bar staff should not be allowed unilaterally to extend the reach of the court's April 15 order to an ABA policy which only the staff asserts is inconsistent with the rule announced in that order — the Florida Supreme Court alone holds such authority. Similarly, staff should not be permitted to expand the new rule to prohibit CLE credit even when an ABA course is taught by one instructor and no quota applies. Again, the court has never announced its opposition to the ABA's CLE policy.

The May 25, 2021 Florida Bar News article, authored by a member of the Bar staff, correctly observes that the court's concerns relate to a Business Law Section policy which “imposes quotas requiring a minimum number of ‘diverse’ faculty, depending on the number of faculty teaching the course.” See <https://www.floridabar.org/the-florida-bar-news/supreme-court-taking-comments-on-new-cle-rule/> (emphasis added). It is bootstrapping for the Bar staff to refer this commenter to the staff's own news article as a resource to address this commenter's confusion over the staff's application of the amended rule to the ABA's May 3 CLE course. The article merely restates what this commenter already knew; namely, that the Bar staff assumes the new rule applies to all CLE courses sponsored by the ABA if those courses are taken after April 15, 2021 and were not previously approved for CLE credit in Florida:

Because the ABA's CLE Diversity and Inclusion Policy is very similar to the Business Law Section policy, the ABA's CLE programs are now ineligible for Florida CLE credit, according to Terry Hill, director of programs for The Florida Bar.

Hill said the Bar is also now prohibited from awarding credit to Florida attorneys who self-apply for CLE credit for ABA programs, including speakers.

Id.

To date, Bar employees have not identified the factors they relied upon in determining that the ABA's policy "is very similar" to the Business Law Section's former policy. *Id.* Furthermore, there is nothing on the face of the court's opinion that supports the Bar director of programs' conclusion that "the Bar is also now prohibited from awarding credit to Florida attorneys who self-apply for CLE credit for ABA programs." *Id.* The new language of Rule 6-10.3(d) prohibits Florida CLE credit only for "any course submitted by a *sponsor*." (emphasis added). The Bar staff's overreach is an abusive exercise of bureaucratic fiat.

The Bar staff have simply provided no clue to illuminate their decision to interpret the court's ruling in a way that ignores the Bar's decades-long acceptance of ABA courses for Florida CLE credit when Bar members self-apply for such credit. This sea change in CLE accreditation policy is all the more baffling in view of the fact that Bar employees adopted it without any input from either members of the Bar or the Board of Governors. Instead,

the Bar staff appear to base their determinations on a hazy set of inferences about a Florida Supreme Court opinion that does not once refer to the ABA.

For each of the foregoing reasons, this commenter respectfully requests that the court reflect upon the above-described ambiguities baked into its April 15 ruling and the harmful impacts of the Bar staff's assumptions about those ambiguities. Further, this commenter requests that the court withdraw its order and amended rule. If the court does not withdraw its order, it should modify its ruling to address directly whether, when and how it applies to CLE courses offered by the ABA.

People need time to adjust to significant change. Therefore, in the absence of an emergency and to avoid penalizing members of The Florida Bar who have spent their valuable time and money recently to take advantage of ABA CLE courses that have been accepted by The Florida Bar for decades, the court should make any new CLE rule effective no earlier than January 31, 2022, when the current ABA dues year expires.

June 27, 2021

Respectfully submitted,

/s/ Brandon S. Peters
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing comments was filed with the Clerk of Court via Florida Courts ePortal this 27 day of June, 2021.

/s/ Brandon S. Peters
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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.045, the undersigned certifies that the foregoing comment complies with the applicable font requirements because it is written in Arial 14-point font. Pursuant to Florida Rules of Appellate Procedure 9.210, the comment contains 2,169 words, excluding those parts exempted by Rule 9.045(e).

/s/ Brandon S. Peters
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