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June 25, 2021

EXPRESS MAIL

Florida Supreme Court
Office of the Clerk
500 South Duval Street

Tallahassee, Florida 32399-1927

Attention: Justices Canady, Polston, Lawson, Muniz, Couriel, and Grosshans

**RE: Comments in Support of Rescission and Withdrawal of Order In Re:
Amendment to Rule Regulating The Florida Bar 6-10.3 dated April 15, 2021**

Your Honors:

I am licensed to practice law in Florida since 1982 and in New York since 1973, AV Preeminent® Peer Review Rated by Martindale-Hubbell®, and graduate of Harvard Law School. I am former Chair of the Corporations, Securities, and Financial Services Committee and former member of the Executive Committee of the Business Law Section of The Florida Bar and continue to serve actively on the Corporations, Securities, and Financial Services Committee and its legislative and regulations drafting subcommittees. I participate actively on several committees or task forces of the New York City Bar Association and the American Bar Association (the “ABA”), among other lawyers’ associations.

In addition to practicing transactional business law, my activities as a lawyer since 2006 include serving as an expert witness regarding ethical and fiduciary duties of attorneys. I also am an arbitrator for the Financial Industry Regulatory Authority since 2011 and for the American Arbitration Association® since January 2021.

I am 73 years old, Jewish, divorced, immunodeficient, and, by biology and self-identification, a woman. Although I practiced law in Florida and New York with law firms of all sizes and as in house counsel to financial institutions, I practice law since October 2008 exclusively through my single member professional limited liability company. I am, therefore, a member of several “underrepresented” groups within the legal profession. *No bar association selected me for inclusion on the faculty of a continuing legal education (“CLE”) program after I left my last large law firm in 2005, until Fall 2020, after the ABA adopted its current policy for selecting CLE program faculty.*

I presented as panelist two webinars sponsored by the American Bar Association’s Senior Lawyers Division ADR Committee, the most recent of them being “ADR for Transactional and

Received, Clerk, Supreme Court

JUN 28 2021

Florida Supreme Court
Office of the Clerk
June 25, 2021

Page 2

New Attorneys” on May 19, 2021 (the “2021 Webinar”). My segment of that webinar, including oral presentation, PowerPoint slides, and other materials, entitled “Ten Commandments of Ethics and Professionalism in Arbitration,” considered Rule 8.4(g) of the ABA’s Model Rules of Professional Conduct and the extent to which the courts regulating attorneys licensed to practice law in each state of the U.S.A. adopted text or principles of ABA Model Rule 8.4(g). I expended more than 40 hours preparing for that segment.

As I informed the webinar attendees, Florida Rule of Professional Conduct Rule 8.4(d) prohibits a lawyer to, among other actions, discriminate against other lawyers “*on any basis, including but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.*” (Emphasis supplied.)

By Order No. SC21-284, on April 15, 2021 (the “Order”), this Court, on its own motion, amended Florida Rule 6-10.3 to prohibit approval by the Board of Legal Specialization and Education of CLE credit to faculty or attendees of any course “that uses quotas based on” any of the bases of discrimination prohibited by Florida Rule 8.4(d) other than “marital status. . . age, socioeconomic status, employment, or physical characteristic.” On June 9, 2021, The Florida Bar denied my request to post to my Florida Bar Profile CLE credit as attendee and faculty member of the 2021 Webinar, explaining “The Florida Bar will not be able to approve courses, lecture credit or attendance credit applications for CLE Accreditation from sponsoring organizations who [*sic.*] have a CLE Diversity & Inclusion Policy that uses quotas.”

The Business Law Section of The Florida Bar, the ABA, the New York City Bar Association, and many other CLE program sponsors adopted policies to include representatives of underrepresented groups within the legal profession on faculty of those programs in a good faith effort to comply with both text and principles of ABA Model Rule 8.4(g) or its analog adopted in the respective states, including among others Florida Rule 8.4(d). Based on the Order, the Florida Bar Business Law Section policy does not purport to use “quotas” to assure inclusion on its CLE programs faculty based on religion, national origin, marital status, age, socio-economic status, employment, or physical characteristic, although uses “quotas” to assure that inclusion based on “multiculturalism.” And the Order does not purport to prohibit approval of CLE credit for courses faculty of which are chosen based upon multiculturalism, marital status, age, socioeconomic status, employment, or physical characteristic.

Accordingly, I respectfully submit that the Order unequally and unfairly distinguishes bases on which sponsors of CLE programs discriminate against lawyers seeking CLE faculty status, defies both text and principles of Florida Rule 8.4(d), exceeds requirements of the U.S. Supreme Court, and should be rescinded and withdrawn retroactively, as of April 15, 2021.

Very truly yours,



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