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June 29, 2021

VIA EMAIL ONLY tomasino@flcourts.org
John A. Tomasino, Clerk
Florida Supreme Court

In Re: Amendment to Rule Regulating the Florida Bar 6-10.3(d) /Business Law Section (CLE) Case NO.: SC21-284

Dear Clerk Tomasino:

This letter provides a comment to the Supreme Court's *sua sponte* decision adding Rule 6-10.3(d) to the Rules Regulating the Florida Bar.

Summary of Comment.

The decision should be reconsidered from both a procedural perspective and a substantive perspective. The decision addresses a moot issue and may appear to be injecting the Court into political debates regarding CLE providers without addressing diversity issues. The process leading to the decision undermines the legitimacy of the decision, potentially weakening the Court's hard -fought respect. If diversity is important, then the Court should clearly take steps to implement goals.

Writer Background.

Writing in my individual capacity, not on behalf of any organization, the undersigned has served this past year as Chair of The Florida Bar's Professional Ethics Committee, after serving as a liaison to the Constitutional Revision Commission, and previously as Chair of the Bar's largest substantive law section and am a recipient of the Palm Beach County Legal Aid Society Child Advocate of the Year Award.

The undersigned is a dual Florida Bar Board Certified Lawyer, also certified as a mediator (circuit civil and county civil) and having served as a court special master and as an arbitrator. As a volunteer continuing legal education presenter I have annually presented numerous credit approved courses many including ethics credits, under the auspices of The Florida Bar and voluntary bars, local, state and national. I have also produced and directed CLE programs for The

Florida Bar and voluntary bars, including The American College of Real Estate Lawyers. These CLE programs have received overwhelmingly positive evaluations.

In addition, to my continuing volunteer service as the attorney member of the Palm Beach County School Board's Construction Oversight and Review Committee, I was the first chair of the School District's Contracts Subcommittee charged with developing and providing policy recommendations for consideration by the School Board. Beyond numerous chairs and other roles for the School District which is one of the nation's largest, I volunteer as the Youth Court Magistrate at Palm Beach Lakes Community High School in West Palm Beach. and locally served as the Chair of the City of Boca Raton's Builders Board of Adjustment and Appeals, as a congregational trustee and president.

Comment.

Unfortunately, the message received by many is that the Court does not value diversity, and by acting *sua sponte* the Court desires to reinforce that message. There are countless errors that occur in Florida daily which the Court does not address, especially *sua sponte*. Quite the opposite, the Court regularly has required notice and an opportunity for interested parties to be heard before a decision. Rule-making with statewide and national implications welds a sledgehammer seemingly without precedent when a whisper or telephone call would do.

If the Court recognizes the value of diversity as the concurring opinion may be interpreted to imply, and if the Court strives for a Bar to represent all the citizens of the State, then this is the time to say so and act. By acting *sua sponte* on an issue that the Business Law Section swiftly mooted, the Court opened the door to effectively address historical patterns of discrimination in the State. The need to address diversity is well recognized, the decision now begs whether the Court will take effective action to lead the Bar on the issue of diversity.

How to lead? As the Court would act to solve a problem, set goals with direction to the Bar to implement. Diversity does not require quotas. Aspirational goals reinforced by efforts demonstrating commitment works. These efforts must be multifaceted and must evolve to stay focused and successful.

Concerning the disqualification of other CLE providers, the Court's rush leads undoubtedly to unintended consequences. For example, a number of religious institutions offer continuing legal education credits as part of their congregational efforts. Those churches, synagogues and mosques, and their affiliated organizations, would appear to run afoul of the new Rule by limiting speakers to only those that share their religious beliefs.

By addressing CLE providers when no issue was raised, no petitions joining an issue, no opposing parties, the Court can appear to be going out of its way to enter one of the nation's partisan debates, seeking to take the lead to discredit the American Bar Association's diversity efforts. This raises the danger of injecting the Florida Supreme Court and its Justices into a political issue. Especially considering the likelihood that the Court will have to hear disputes

regarding race-based issues, the Court places itself in a position where it may be argued that the Court has prejudged the situation.

Looking at the process, the decision rejects the time tested, honed over centuries, "adversarial" process with input from the spectrum of perspectives before issuing a ruling. This process is necessary to reach a proper conclusion, not just in terms of abstract justice, but to reinforce the perception of legitimacy which is a bedrock of the Court's authority. Truncating the "cauldron of debate" tends towards decisions merely reinforcing the perspective of the decision-maker. Without consideration of opposing thoughts, even if distasteful to the decision-maker, introduces fallacies and faults in the final opinion.

Conclusion.

In closing, it seems obvious that the Business Law Section has learned a lesson from this process and is understood to be rescinding its policy. Thus, the Court is urged to vacate its Order as the matter is moot and with the education this process has provided is unlikely to be repeated. Further, the Court is urged to cease *sua sponte* rule making which is counter to the highly effective adversarial process for testing proposals and helps avoid the undermining of the fragile legitimacy upon which a Court's authority is based. Finally, if diversity is valued, then set goals with direction for implementation.

Respectfully submitted,

Michael J. Gelfand

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