IN THE SUPREME COURT OF FLORIDA

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

Case No. SC21-284

COMMENTS OF THE FLORIDA BAR
HEALTH LAW SECTION

The Health Law Section of The Florida Bar (the "Section") files these comments to express its concern about this Court's decision *sua sponte* on April 15, 2021 to amend Rule 6-10.3(d) of the Rules Regulating The Florida Bar, denying continuing legal education ("CLE") credit if a sponsoring organization employs quotas to achieve diversity in course faculty.[1] In the process, the Court has severely limited the ability of Florida attorneys to benefit from CLE programs planned by marquee organizations such as the American Bar Association ("ABA"), which are critical to honing professional skills and acquiring legal acumen.

First and foremost, the Section is fully supportive of diversity in the legal profession. Many of us have helped healthcare clients tackle care disparities for patients in certain demographics. We believe just as fervently that diversity in attorney perspectives – race, color, gender, national origin,

[1] These comments are filed on behalf of the Section and not that of The Florida Bar generally.

religion, age, disability, sexual orientation – serves to strengthen fairness and justice in the legal system.

The Section makes no comment on the issue of whether quotas aimed towards CLE program faculty diversity are permissible under the Equal Protection Clause in the 14th Amendment, United States Constitution. Instead, the Section offers the following observations:

1. One hundred seventeen (117) of the Section's members are certified by The Florida Bar in Healthcare Law. Certification in this area is commonly viewed as being one of the most difficult to achieve and maintain, in that specialists must be fluent in esoteric and constantly changing federal and state laws. These board certified lawyers require the high-level CLE programming offered by organizations such as the ABA, in order to achieve and maintain certification. The Section's CLE programs are excellent; but it is not practicable to fulfill certification requirements without attending CLE programs sponsored or co-sponsored by the ABA or other organizations that provide the necessary advanced level courses required to maintain board certification. Elimination of these CLE credits will leave our Section's board certified attorneys hard pressed to find equivalent CLE programming. We anticipate that attorneys will likely be dissuaded from pursuing or

continuing board certification in this field, which translates to a direct negative financial impact to The Florida Bar and a disservice to the robust Florida healthcare industry.

2. Even those Section members who are not board certified by The Florida Bar in Healthcare Law will now be forced to choose: (i) attend ABA and other programming at significant cost and expense to keep abreast of developments, but receive no CLE credits; or (ii) select less robust programming that may still qualify for CLE credits through The Florida Bar. This sort of dilemma can be avoided if the Court rewrites Rule 6-10.3(d).

3. Section members have no control over whether a CLE program sponsor has adopted a quota policy, and oftentimes no means to verify if a sponsor's selection of CLE program faculty is guided by such a policy. Rule 6-10.3(d) as rewritten is unnecessarily punitive to Section members, as Section members have little to no control over a CLE program sponsor's policies on faculty selection.

4. In the past, this Section has partnered with the organizations such as the ABA to bring CLE programs to members of The Florida Bar. Not only did this reduce the cost to The Florida Bar of putting on CLE programs, but it enabled the Section to attract star speakers and experts in

the healthcare industry. Rule 6-10.3(d) will have a chilling effect on such partnerships for future CLE programming.

5. Likewise, to the extent the Section's members will not be offered CLE credit in connection with speaking at an ABA sponsored or co-sponsored programs, there will be less incentive for the Section's members to serve in this fashion. This Court should be concerned that its revision of Rule 6-10.3(d) might have the effect of reducing visibility and prominence of this Section's highly regarded experts on the national stage.

6. It is our belief that the issue of whether CLE sponsors can utilize quotas to diversify program faculty under the Equal Protection Clause of the 14th Amendment of the United States Constitution can be addressed by this Court – without simultaneously affecting eligibility of those CLE programs for credit. Certainly, this Court is familiar with the concept of 'narrow tailoring' having examined Bakke, Bollinger, and progeny affirmative action cases. But 'narrow tailoring' was not the Court's approach in amending Rule 6-10.3(d). Instead of simply prohibiting quotas, the Court expanded its reach to scathe the Section's members and similarly situated Florida counsel that merely seek to meet their respective requirements of CLE

programming. By way of suggestion, this Court could consider adopting the following new form of Rule 6-10.3(d):

> (d) **Course Approval.** Course approval is set forth in policies adopted pursuant to this rule. Special policies will be adopted for courses sponsored by governmental agencies for employee lawyers that exempt these courses from any course approval fee and may exempt these courses from other requirements as determined by the board of legal specialization and education. Although diversity in faculty and participants at courses is encouraged, the board of legal specialization and education may not approve any course, solely sponsored by a section of the Florida Bar, that uses quotas based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants.

For all of the reasons noted above, this Section urges the Court to reconsider its amendment of Rule 6-10.3(d) to make CLE credits once again available to Florida attorneys for all programs. We thank you for your consideration of the foregoing comments in your reconsideration of the recent amendment to Rule 6-10.3(d).

Respectfully submitted,

/s/ Adam R. Maingot

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I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on July 2, 2021, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.

/s/ Adam R. Maingot
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I HEREBY CERTIFY that this document complies with the appropriate font and word count limit requirements.

/s/ Adam R. Maingot
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