

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC21-284

COMMENT OF FLORIDA PUBLIC DEFENDER ASSOCIATION

The Florida Public Defender Association, Inc., (“FPDA”) respectfully offers the following comment in opposition to the Court’s April 15, 2021, adoption of Rule Regulating the Florida Bar 6-10.3. The FPDA consists of 19 elected public defenders, hundreds of assistant public defenders, and support staff¹. As appointed counsel for thousands of indigent defendants from all parts of Florida, FPDA members witness the personal and societal costs of discrimination against members of diverse groups. The hiring and training of diverse attorneys is critical to the FPDA mission of ensuring the highest quality representation to clients. Further, FPDA members create, promote, and participate in many continuing legal education programs each year, often working with voluntary

¹ This comment is filed on behalf of the FPDA. One member, Blaise Trettis, Public Defender for the 18th Circuit, disagrees and has filed separate comment.

bar organizations and educational groups. These roles give the FPDA particular insight and interest in the newly adopted rule.

The FPDA asserts the policy of requiring a minimum number of diverse presenters for continuing legal education programs comports with the justice system's goal of nondiscrimination, "equal justice under the law." The United States Supreme Court decisions relied on by the Court, Grutter v. Bollinger, 539 U.S. 306, 334 (2003), and Regents of University of Cal. v. Bakke, 438 U.S. 265 (1978), held that specific racial quotas were unconstitutional as admissions policies in public universities. These cases should not be construed to place out of bounds a policy calling for a minimum number of diverse presenters for continuing legal education programs put on by voluntary bar associations. No precedent holds that a rule mandating a certain number of diverse presenters would violate the Equal Protection Clause. The policy goals of "eliminating bias, increasing diversity and implementing tactics aimed at recruiting and retaining diverse attorneys" could be lawfully accomplished with the prior version of the rule.

Moreover, the FPDA objects on moral and fiscal grounds. The FPDA is concerned the rule change will discourage diversity in

presenters at continuing legal education programs. The FPDA is also concerned that its members will be prevented from joining and sharing costs for continuing legal education programs with bar associations or education groups which have a panel diversity policy, such as the Business Law Section's prior written Diversity & Inclusion CLE Speaker Panel Policy.

As Justice Labarga explained in his dissent, the adoption of a rule specifically addressing this issue is unnecessary, as the Court could have issued a letter to the Business Law Section to express concerns about potential discrimination in assembling speaker panels for continuing legal education programs. In the past, the Court sent a similar letter to voluntary bars and leaders to ensure that that all bar-related activities comply with the Americans With Disabilities Act after an attorney with a disability was unable to attend a social gathering at a non-accessible venue. Pudlow, Jan, *Court Urges All Bars to Get Right with the ADA*, Mar. 1, 2014, <https://www.floridabar.org/the-florida-barnews/court-urges-all-bars-to-get-right-with-the-ada/>.

The FPDA is strongly committed to participation in legal education programs that eliminate bias, increase diversity, and

implement tactics to recruit and retain diverse attorneys. For these reasons, the FPDA objects to the amendment of Rule 6-10.3 of the Rules Regulating the Florida Bar.

CERTIFICATES

I certify that this comment complies with the font and word-count-limit requirements in Florida Rule of Appellate Procedure 9.045, and was filed, via the Florida Courts E-Filing Portal, with the Clerk of the Supreme Court of Florida, on July 13, 2021.

Respectfully submitted,
FLORIDA PUBLIC DEFENDER
ASSOCIATION, INC.

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