IN THE SUPREME COURT OF FLORIDA

Case No.: SC21-284

IN RE: AMENDMENT TO RULE

REGULATING THE FLORIDA BAR 6-10.3

_____/

COMMENTS OF ZUCKERMAN SPAEDER LLP

On its own motion, the Court amended Rule 6-10.3(d) of the Rules Regulating the Florida Bar to deny continuing legal education credit for any course that uses "quotas" based on race, ethnicity, gender, religion, national origin, disability or sexual orientation in the selection of course faculty or participants.

Many organizations, including the American Bar Association ("ABA"), have policies to promote diversity that are similar that of the Florida Bar's Business Law Section. And many Florida lawyers—the undersigned included—rely on the ABA's continuing legal education programs, not simply to "check a box" to fulfill their legal education requirements, but to enhance and hone their legal skills to best serve the people of Florida.

In this regard, since 1987, the ABA—with the support of Zuckerman Spaeder LLP and its lawyers—has held the White Collar

Crime Institute ("WCCI"). The WCCI annually attracts over 1,000 lawyers, many from Florida, to hear and learn from some of the most qualified panelists from across the nation, and from all walks of life, background, and experience. The WCCI is, in fact, well attended not only due to the depth of the panelists' experiences, but due to their diversity.

Further, Miami has been one of the favorite locations for the WCCI over the years, and the WCCI is scheduled to be in Miami this year from October 27-29. The WCCI puts on some of the best programming in the country because of wide participation by the Department of Justice, federal judges, academics and practitioners. Based on the Supreme Court's recent ruling, no Florida lawyer will receive any continuing legal education credit for participating in that programming. Every other state Bar recognizes the ABA programming so that only Florida lawyers will be denied credit. That simply makes no sense, and in no way solves the issue identified by the Supreme Court.

By way of example, Morris Weinberg, one of the undersigned, has participated in virtually all the WCCI since its beginning in 1987. Frequently, he participates as a moderator in the panels. In the

upcoming WCCI for Miami, he is moderating a two-hour ethics panel. The panelists include Mary Jo White (former US Attorney for the Southern District of New York and 31st Chair of the Securities and Exchange Commission; Richard Deane (former US Attorney for the Northern District of Georgia and counsel at Jones Day); Lara Bazelon (noted author and ethics expert and law professor at the University of San Francisco Law School); Zachary Terwilliger (former US Attorney for the Eastern District of Virginia and partner at Vinson & Elkins); and Jon Keker (founding partner at Keker, Van Nest & Peters and leading white collar criminal defense lawyer). The panel consists of 2 women, 4 Caucasians and 1 African American—all of whom have decades of experience and are some of the leading experts in the country. Neither the undersigned, who has spent and will spend hours putting this panel together, nor any other Florida lawyer who attends this panel would receive continuing legal education credit under the Supreme Court's amended rule.

The Court undertook to amend this rule, even though no one appears to have complained about the well-intentioned efforts to promote diversity of views and experience in continuing legal education programs that Florida attorneys rely on to hone their legal

skills, and in turn, better serve the public. The Court did so, even though no facts have been developed to support the legal conclusion that a particular policy is tantamount to a "quota." And the Court's motion concludes—with little analysis—that "[i]t is essential that the Florida Bar withhold its approval from continuing legal education programs that are tainted by such discrimination."

Absent a "complainant" with standing to complain, and absent discovery from which a factual record can been developed on which to reach a legal conclusion that a policy is tainted by "discrimination," the Court should reconsider its motion. Instead, the Court should allow important issues of "discrimination" to be addressed through the adversary process—where a plaintiff who can demonstrate real and concrete injury brings suit under a valid legal theory to challenge some act that has deprived him or her of a cognizable legal right. That is how every case challenging some wrong—factual or perceived—begins. And if such a legal challenge, by an identified plaintiff with standing, passes initial muster, the discovery process will permit the development of a robust factual record from which a court can apply the facts to the law.

That has not occurred here. There is no complainant. There has been no discovery. There has been no fact-finding process. Yet the Court has concluded that someone must have suffered, or will suffer, discrimination, without the benefit of any facts demonstrating that is so, let alone any facts demonstrating that a given policy constitutes a "quota."

In these circumstances, and where the implications of the *sua sponte* rule will harm the lawyers in this State and—more importantly—the people they serve, the Court should abstain from acting in a factual vacuum, and reconsider its amendment to the rule. The impact on the ABA's WCCI is only one such example of the harmful impact of the Court's order on Florida lawyers.

Further, because the Court values diversity, then in lieu of amending the rule by striking down the policy recently adopted by the Business Law Section of The Florida Bar, the Court should instead include an affirmative statement that embraces the benefits of diversity, and which encourages legal education programs to invite individuals from all walks of life and experience to participate on legal education panels to, in the sage words of Justice Lawson, "fully advance the ideals underpinning of our judicial system."

July 14, 2021

Respectfully submitted,

/s/ Morris Weinberg, Jr.
Morris Weinberg, Jr.
Fla. Bar No. 0486401
Marcos E. Hasbun
Fla. Bar No. 0145270
101 E. Kennedy Blvd., Suite 1200
Tampa, FL 33602
Tel: (813) 221-1010
Fax: (813) 223-7961
sweinberg@zuckerman.com
mhasbun@zuckerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing comment was filed with the Clerk of Court via Florida Courts e-Portal this 14th day of July, 2021.

/s/ Morris Weinberg, Jr.
Morris Weinberg, Jr.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this comment complies with the font requirements of Fla. R. App. P. 9.045(b) because it is written in 14-point Bookman Old Style, and that his comment complies with the

word count limit of Fla. R. App. P. 9.100(g) because it contains 955 words, excluding those parts exempted by Rule 9.045(e).

/s/ Morris Weinberg, Jr.
Morris Weinberg, Jr.