

IN THE  
SUPREME COURT OF FLORIDA  
CASE NO. SC21-284

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

\_\_\_\_\_ /

**COMMENTS OF THE FLORIDA BAR  
FAMILY LAW SECTION**

The Florida Bar Family Law Section (the “FLS”) submits the following comments to this Court’s amendment to rule 6-10.3(d) of the Rules Regulating The Florida Bar, as set forth in its *per curiam sua sponte* opinion of April 15, 2021.

**BACKGROUND**

The Florida Bar has publicized its stated mission

[t]o increase diversity and inclusion in The Florida Bar so that the Bar will reflect the demographics of the state, to develop opportunities for community involvement, and to make leadership roles within the profession and The Florida Bar accessible to all attorneys, including those who are racially, ethnically and culturally diverse, women, members of the LGBTQ community and persons with disabilities.<sup>1</sup>

The Executive Council of The Florida Bar Business Law Section, on September 4, 2020, approved a diversity policy for all

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<sup>1</sup> <https://www.floridabar.org/about/diversity/>.

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continuing legal education (“CLE”) programs “sponsored or co-sponsored by the section after January 1, [2021].”<sup>2</sup> The new CLE diversity policy applies to any CLE program with three or more panel participants, including the moderator. A program with three or four panel participants requires at least one of the participants to be a diverse member. A program with five to eight participants requires at least two diverse members. A program with nine or more panel participants requires at least three diverse members.<sup>3</sup> Per the Business Law Section’s Continuing Legal Education Diversity Form, “[d]iverse members include members of diverse groups based upon race, ethnicity, gender, sexual orientation, gender identity, disability, and multiculturalism.”<sup>4</sup> The policy was modeled after a similar policy of the American Bar Association (“ABA”), adopted in 2016.<sup>5</sup>

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<sup>2</sup> Jim Ash, *Business Law Section to Diversify Its Education Program Panels*, Florida Bar News, September 8, 2020 (at <https://www.floridabar.org/the-florida-bar-news/business-law-section-to-diversify-its-education-program-panels/>).

<sup>3</sup> *Id.*

<sup>4</sup> <https://flabizlaw.org/diversity-application/>.

<sup>5</sup> Lany L. Villalobos, *Diversity and Inclusion: An Overview of the ABA’s CLE Policy and the Section’s Plan and Committee*, ABA Tax Times, February 27, 2020 (at

This Court, on its own motion, and after lauding the Business Law Section’s efforts, nevertheless declared its CLE policy “out of bounds”<sup>6</sup> and adopted the amendment to Rule 6-10.3(d), ordering the Board of Legal Specialization and Education to reject

any [CLE] course submitted by a sponsor, including 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.”<sup>7</sup>

As a result of the Court’s action, the Business Law Section has purportedly withdrawn its laudable policy.<sup>8</sup> Further, attorneys can no longer receive CLE credit for any ABA-sponsored or co-sponsored CLE program that had not been approved by the Board of Legal Specialization and Education as of April 15, 2021.<sup>9</sup>

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[https://www.americanbar.org/groups/taxation/publications/abataxtimes\\_home/20feb/20feb-villalobos-diversity-inclusion-overview/](https://www.americanbar.org/groups/taxation/publications/abataxtimes_home/20feb/20feb-villalobos-diversity-inclusion-overview/).

<sup>6</sup> *In re: Amendment to Rule Regulating The Florida Bar 6-10.3*, 46 Fla. L. Weekly S73a (Fla. 2021).

<sup>7</sup> *Id.*

<sup>8</sup> Mark D. Killian, *Supreme Court Taking Comments on New CLE Rule*, Florida Bar News, May 25, 2021 (at <https://www.floridabar.org/the-florida-bar-news/supreme-court-taking-comments-on-new-cle-rule/>).

<sup>9</sup> <https://www.americanbar.org/events-cle/mcle/jurisdiction/florida/florida-rule-change/>.

## **ARGUMENT**

The FLS adds its voice to the growing number of commenters who have questioned the circumstances under which the Court issued its edict, who have criticized the drastic overreach thereof, and who have urged this Court's reconsideration and repeal of the added language to the rule, or, at the very least, further amending the rule to apply solely to CLE programs sponsored solely by The Florida Bar or its entities and sections.

While the Court has jurisdiction, pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.140(d), to implement the change to rule 6-10.3(d), the fact that the Court did so *sua sponte*, without the opportunity for public comment prior to its effective date, has had the unintended effect of negatively impacting many Florida attorneys who had already enrolled in various ABA-sponsored CLE programs for which Florida CLE credit is now no longer available. Other Florida attorneys who have planned and prepared to present at such CLE programs are similarly affected.

Further, inasmuch as no one presumably had initiated action to attack the Business Law Section's CLE policy, no real

controversy existed. Fla. R. Gen. Prac. & Jud. Admin. 2.140(d) provides that “[t]he [rule] change may become effective immediately or at a future time.” It is clear from the many comments filed thus far that the Court should have chosen the latter course.

The FLS does not opine on the shaky constitutional argument framed by the Court in the few sentences in its opinion justifying the rule change, other than to say, as other commenters have done more eloquently, that the Court’s reliance on *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Regents of University of Cal. v. Bakke*, 438 U.S. 265 (1978) is misplaced. The FLS finds the analysis of commenter, Carlton Fields, P.A., persuasive.

The FLS urges the Court to abrogate the rule change, or, alternatively, further amend the added language, as the Public Interest Law Section has proposed, to read:

The board of legal specialization and education may not approve any course submitted by ~~a sponsor, including a section of The Florida Bar~~ or any entity thereof, that uses quotas based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants.

The alternative language proposed by the Health Law Section would likewise be preferable:

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.

Respectfully submitted this 14th day of July 2021.

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CERTIFICATE OF SERVICE

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

/s/ Jack A. Moring  
JACK A. MORING  
Fla. Bar No. 499160

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that, pursuant to Fla. R. App. P. 9.045(e), this Comment complies with the applicable font and word count limit requirements. This Comment was prepared as a Microsoft Word document (.docx), composed in Bookman Old-Style, 14-point (including footnotes), and contains 927 words.

/s/ Jack A. Moring  
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