

IN THE SUPREME COURT OF FLORIDA

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

Case No. SC21-284

COMMENTS OF NAVAN WARD, PRESIDENT, AMERICAN ASSOCIATION FOR JUSTICE

The American Association for Justice (AAJ) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including in Florida. Throughout its 75-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

AAJ respectfully objects to the Supreme Court of Florida's amendment to Florida Bar Rule 6-10.3(d) of the Rules Regulating the Florida Bar ("Minimum Continuing Legal Education Standards"). The amendment prohibits the Bar's Board of Specialization and Education from

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approving continuing legal education (CLE) credit attendance of any program that “uses quotas based on race, ethnicity, gender...” in the selection of faculty. AAJ urges the Court to reconsider its changes to the rule or to clarify the rule for the following reasons.

AAJ is committed to promoting and cultivating diversity among the trial lawyer community and ensuring diversity among its membership and leadership. AAJ believes that a strong trial lawyer community can only be achieved through diversity and by focusing on inclusion. To that end, AAJ makes diversity and inclusion a priority through various policies, committees, and programs.

The National College of Advocacy (NCA)—the educational arm of AAJ—establishes the policy for AAJ’s continuing legal education programs. The Court’s amendment to Florida Bar Rule 6-10.3(d) greatly impacts the 1,518 Florida licensed lawyers who are AAJ members. Through the NCA, AAJ offers over 150 hours of continuing legal education each year. Through its CLE programs, the NCA and AAJ provide a national platform for its speakers, and in many cases these speaking engagements support their professional growth and enhance their careers. AAJ has held four out of the last ten in-person Winter Conventions in Florida, attracting local plaintiff trial lawyers as both faculty and participants seeking CLE.

The NCA diversity policy is a testament to AAJ's commitment to diversity and inclusion. It is the policy of the NCA and AAJ to affirmatively seek and encourage the participation of minorities and women in all educational programs. To that end, no program may be approved unless at least one woman and one minority are included in the recommended faculty, except for good cause. The NCA works closely with various AAJ member groups and committees to ensure each program includes diverse speakers, unless an exception for good cause applies. An example of a program in which an exception for good cause might apply is a small program with few faculty who must be subject matter experts in a specific litigation and/or serve as court-appointed litigation leaders.

AAJ objects to the Court's amendment to Florida Bar Rule 6-10.3(d) on its face. However, if the Rule stands, AAJ asks that the rule be clarified to distinguish programs with good cause exceptions, such as the AAJ/NCA policy. A policy that includes a good cause exception does not contain a "quota." See *California v. Bakke*, 438 U.S. 265, 317 (1978) (for a race-conscious selection policy to be constitutionally permissible it must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant.")

The diversity policies for AAJ’s continuing legal education programs are just one of the many ways AAJ supports diversity and inclusion. Other channels include AAJ’s Diversity and Inclusion Committee—formed in 2010 as the “Diversity Committee” and renamed in 2019—to promote and cultivate diversity and inclusion among the trial lawyer community and AAJ membership. The Committee works closely with AAJ’s Minority Caucus, Women Trial Lawyers Caucus, LGBT Caucus, and New Lawyers Division to ensure underrepresented groups are engaged and supported within the association and trial bar. The same year, the policies and procedures for AAJ’s Sections and Litigation Groups were amended to strongly recommend diversity in leadership of Litigation Groups and in the recruitment of new officers for Sections.

In 2011, the AAJ Board of Governors amended the association bylaws to provide for an additional Board of Governors seat per jurisdiction, with bona fide consideration given to at least one minority or female member. And in 2013, AAJ established its Leadership Academy, a program dedicated to improving, developing, and ensuring diversity in AAJ’s membership and its leadership, particularly among those who are underrepresented within the association based on ethnicity, race, gender, sexual orientation, religion, age and disability.

As outlined above, diversity and inclusivity are deeply rooted values of AAJ. One way in which AAJ ensures and is committed to diversity is through its diverse faculty policy on CLE programs. This policy, like other AAJ initiatives, plays a critical role in promoting underrepresented groups within the association and plaintiff bar.

AAJ respectfully urges the Court to rescind its amendment to Rule 6-10.3(d) or to clarify the amendment such that diversity policies with good cause exceptions do not fall under the rubric of programs that will not be approved for CLE credit.

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Respectfully submitted,

s/ Sean Domnick
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