

SUPREME COURT OF FLORIDA

Case No. SC21-284

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

**COMMENTS OF
KENNY NACHWALTER, P.A. IN OPPOSITION TO
RULE CHANGE OR PROPOSED LIMITATION ON RULE CHANGE**

While we disagree with the newly amended rule and accompanying legal reasoning in the Court's April 15, 2021 Order, we do not wish to repeat the arguments and positions already expressed by others concerning the impropriety and harm of the amendment. Rather, our comment is limited to a request that, if the amendment remains in place, the restrictions be limited to CLE seminars offered by The Florida Bar or its sections, and that national and voluntary organizations be permitted to adopt such rules as their members support, while still being eligible to provide CLE credit to Florida lawyers. Denying credit for CLE programs sponsored by out of state and national organizations such as the American Bar

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Association (ABA) will result in a Bar that is less well-educated on global, national and specialty subjects and also will disadvantage local CLE speakers who will have less to offer because they are not attending national CLE conferences. A less educated lawyer poorly serves her clients.

We propose that if the rule change is not vacated, that the rule be further amended as follows:

(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. Diversity in faculty and participants at courses is encouraged; however, the board of legal specialization and education may not approve any course **solely sponsored by The Florida Bar or any section thereof** that uses quotas based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants.

Our firm relies on and participates in the antitrust, ethics, ediscovery, and legal malpractice conferences sponsored by the ABA and others. These matters are explored in far greater depth at the national level with national panels of speakers, which include counsel and judges handling cutting edge issues or industry experts who are not necessarily practicing lawyers. Speakers with specific

expertise are not readily available to State Bar associations. Our firm's lawyers currently participate in and speak at national conferences and also at locally sponsored CLE events, thus sharing with others locally the depth of knowledge that we gain at the national conferences. We ask that the Court limit the as-adopted nationwide reach of the rule to instead apply only The Florida Bar and its sections, such that CLE credit can continue to be earned at these critical out-of-state and national conferences.

For some lawyers, the offerings of The Florida Bar will provide the education they need for their purely Florida law based practices. However, many other lawyers, including many of those at our firm, require more specialized, in-depth education for their federal, national, and/or global practices. Certain of these practice areas may have only a limited number of Florida practitioners, and if a Florida lawyer desires to obtain the best possible continuing education, the ABA and others offer much more comprehensive educational opportunities.

Indeed, in the month after this comment is submitted, the ABA is offering numerous CLE programs that address global, national, and federal laws, as well as programs on developments in the law

that affect clients and lawyers in multiple jurisdictions. The Court's rule change, as interpreted by The Florida Bar, would deny Florida lawyers credit for CLE in their practice areas that require education beyond that offered by The Florida Bar and local sections. Preventing Florida's lawyers from receiving credit for these programs will result in a bar that is less educated, less prepared, and, frankly, less effective than our peers in other states.

A sample of the specialized programs available from the ABA in the next month includes:

- ABA Cross-Border Virtual Institute: The Intersection of Global Discovery, Privacy and Data Security
- The Franchise Agreements in Bankruptcy Cases and Business Restructurings
- Ethical Considerations Surrounding the New Brady Rule
- Criminal Antitrust Bi-Monthly Update
- Taxing Profit in a Global Economy: Part 2 of the webinar series "The Realignment of Taxing Rights in the Global Economy: Impacts & Challenges

- Abusing INTERPOL's Resources to Persecute Expatriate Dissidents: Presented by the ABA International Law Section, National Security Committee
- Canadian Tax Traps for the Unwary American
- The EU's Green Deal: Good Deal or Bad Deal for Food and Agriculture?
- Virtual Derivatives and Futures Law Committee Mid-Year Program
- FCPA Prosecutions and Investigations: Where Are We now?
- Q2 2021 Recent Developments in Health Care & Pharma
- Supplemental Security Income (SSI) Basics
- Class Action Practice in Federal Courts After *Trans Union v. Ramirez*
- Professors' Corner - The Uniform Relocation of Easements Act
- 2021 Public Contract Law Virtual Annual Meeting

This remarkable breadth of subjects in a single month in the summer exemplifies both the breadth of subjects and specificity of education

that many lawyers will miss if they cannot obtain credit for attending seminars relevant to their specific practices.

Moreover, the ABA offers CLE programs in all of the following areas, many of which are not based on a single state’s law or which depend on the interplay of both state and federal or international law:

ACCESS TO JUSTICE	CIVIC EDUCATION	ECOMMERCE
ADMINISTRATIVE LAW	ANTITRUST	CYBERSECURITY*
AGRICULTURE & FOOD	BUSINESS & CORPORATE	COURTS & JUDICIARY
ALTERNATIVE DISPUTE RESOLUTION	CIVIL RIGHTS & CONSTITUTION	CONSTRUCTION
CORPORATE COMPLIANCE	CRIMINAL	DIVERSITY & INCLUSION
ENVIRONMENT	ETHICS	FAMILY
GENERAL PRACTICE	GLOBAL INITIATIVES	GOVERNMENT
HEALTH	HEALTHCARE & PHARMACEUTICS	IMMIGRATION
INSURANCE & FINANCIAL SERVICES	INTELLECTUAL PROPERTY	INTERNATIONAL LAW
LABOR & EMPLOYMENT	LEADERSHIP DEVELOPMENT	LEGAL EDUCATION
LITIGATION & TRIALS	MEDIA & COMMUNICATIONS	MERGERS & ACQUISITIONS
PRACTICE MANAGEMENT	PRO BONO	PROFESSIONAL DEVELOPMENT

PUBLIC
INFRASTRUCTURE
TAXATION
TRANSPORTATION
& ENERGY ISSUES

REAL ESTATE
TECHNOLOGY
TRUSTS & ESTATES

SOLO PRACTICE
TORT

To be sure, The Florida Bar does provide CLE programming in *some* of these areas. And while this programming may be good, it is limited. The ABA presents specialized conferences that attract national speakers and audiences, allowing a depth of education not available to smaller groups. Some Florida lawyers will attend these conferences without regard to the CLE credits. Many, however, will not be able to justify the cost of attendance if they cannot also fulfill their CLE requirements. Many Florida lawyers practicing in many areas will be disadvantaged when clients and their out-of-state counsel consider which lawyers to engage. Thus the newly amended rule will result in a decline in the depth and breadth of continuing education Florida lawyers access and clients' choice of counsel.

In addition, many of the lawyers who currently attend out of state and national conferences mentor other Florida lawyers and/or speak at local CLE seminars. These lawyers bring the benefits of national networks and the guidance and experience of judges,

practitioners and industry experts from other jurisdictions back to those who do not or cannot attend such conferences, whether because of limited resources or because they cannot devote so much time to issues that may only form a small part of their practice. Clients are ill-served when lawyers are less thoroughly educated.

In an ideal world, Florida lawyers would seek out and pursue educational opportunities that enhance and inform their practice without regard to CLE credit. However, the reality is that, for reasons of expediency, lack of resources, or myriad other possible reasons, many Florida lawyers only attend CLE courses for which they earn the required credits. Although some larger law firms may pay for limited attendance at conferences where no Florida CLE credit is available, many individual lawyers or those in smaller firms simply cannot justify the cost of a course that does not also provide credit.

In sum, should the Court feel it necessary to affirm its recent amendment to Rule 6-10.3 of The Rules Regulating The Florida Bar, we strongly encourage the Court to reconsider the national reach of its recent amendment and instead limit the scope of the amendment to The Florida Bar and its sections. To do otherwise will have a

deleterious effect on the continuing education of Florida lawyers and will result in a bar – and clients -- that are the poorer for it.

Dated: July 15, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.045 and 9.210, the undersigned certifies that the foregoing comment complies with the applicable font requirements because it is written in 14-point Bookman Old Style. The comment contains 1,365 words, excluding those parts exempted by Rule 9.045(e).

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