

IN THE SUPREME COURT OF FLORIDA

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

Case No. SC21-284

**COMMENTS OF THE NATIONAL LEGAL AID & DEFENDER
ASSOCIATION**

The National Legal Aid & Defender Association, as an organization and on behalf of its members hereby files the following comments in this matter.

THE NATIONAL LEGAL AID & DEFENDER ASSOCIATION

The National Legal Aid & Defender Association (NLADA), founded in 1911, is America's oldest and largest national nonprofit organization dedicated to the excellence in the delivery of legal services for people who cannot afford to pay for counsel, devoting all of its resources to advocating for equal access to justice for all. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal aid and public defense systems throughout the nation, and provides a wide range of services and benefits to its individual and organizational members.

RECEIVED, 07/15/2021 09:51:28 PM, Clerk, Supreme Court

NLADA counts among its membership more than 700 organizations that collectively represent thousands of attorneys who provide civil legal aid and public defender services to low-income and underserved individuals in the 50 states, the District of Columbia, American Samoa, Micronesia, Puerto Rico, and the U.S. Virgin Islands. Notably, NLADA counts as valued members more than 30 Florida-based public defender and civil legal aid organizations, representing hundreds of Florida attorneys. Moreover, as described below, our reach to Florida attorneys is even broader than our membership.

Among the many services we provide to our members, NLADA offers trainings and continuing legal education (CLE) courses both at national conferences and at stand-alone events. Although NLADA does not have a policy similar to the one that gave rise to the amendment adopted in this case, it has a significant interest in promoting diversity at every level of the legal profession, including diversity in speakers at our conferences and events. Furthermore, one of NLADA's most valued partners, the American Bar Association (ABA), does have such a policy. Accordingly, NLADA and our

members are directly affected by this new rule, through events co-hosted with the ABA.

THE SCOPE OF THESE COMMENTS

NLADA concurs with the numerous comments, including from bar foundations, the Legal Services Corporation, and many individuals averring that:

- (1) The policy in question was not an unconstitutional quota in that no person would have to be denied a spot on a panel and, thus, there is no possibility of any individual harm; and
- (2) Increasing diversity in all fora is not only a laudable but a necessary goal to improve equity in the legal profession.

Moreover, NLADA has an even deeper interest in ensuring and promoting diversity, equity and inclusion in the sector of the profession serving low-income and underserved individuals and communities. It is well established that individuals experiencing poverty and legal issues related to poverty are disproportionately women and people of color.¹ Advocates and experts who can directly

¹ For a summary of research establishing this fact, See [Equal Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases, Including Immigration Proceedings](https://web.law.columbia.edu/sites/default/files/microsites/human-rights-counsel-in-civil-cases-including-immigration-proceedings), Columbia Law School Human Rights Institute Northeastern University School of Law Program on Human Rights and the Global Economy, July 2014, pages 3 -5, available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights->

relate to and build trust with individual clients and their communities are an integral contributing factor to the effectiveness and quality of legal services and the legal profession. Continuing legal education, both for attendees and speakers have a direct impact on diversity, equity and inclusion in the profession through the provision of credits, but also indirectly, through the elevation of speakers as experts, and the effect this has on newer advocates to strive for the same status in the profession.

NLADA recognizes this Court's supervisory power over The Florida Bar. Accordingly, these comments will focus not on the relative wisdom of the particular policy in question that gave rise to the instant change, but on the consequences the amended rule will have if left in place in its current form.

NLADA also echoes the Florida Bar Public Interest Law Section's (PILS) comments on how this amendment could make it more difficult for Florida attorneys to find and receive credit for relevant CLE trainings.

THE IMPACT OF THE AMENDMENT

As written, this amended rule will cause hardship to Florida attorneys, risk isolating them from important national conversations, and preclude them from garnering national recognition for their work and expertise.² This also will have an impact on the clients served by attorneys disconnected and isolated from national experts and the progression of legal doctrines in other venues.

The Florida Bar has confirmed that it interprets the amended rule to bar attorneys from receiving credit for any CLE sponsored or cosponsored by any organization with a policy which includes “quotas,”³ whether or not that policy was used or had any impact on speaker selection.⁴

Accordingly, NLADA is proceeding with the understanding that, at minimum, events co-hosted with the ABA will not receive CLE accreditation for Florida attorneys. Indeed, comments submitted in the instant matter include remarks from Florida

² As noted in PILS’ comments, Florida attorneys will be forced to either pay extra fees and take extra time out of their practice or to forego high-quality CLE trainings hosted or co-hosted by any entity with a diversity policy questioned by Florida’s new amendment. While a concern for any attorney, civil legal aid attorneys and public defenders who have high caseloads and lower salaries have a special concern of finding CLE trainings that are both time and cost efficient.

³ As noted above, NLADA does not believe that the language of the policy in question utilized “quotas,” and believes that there is too great a degree of vagueness in this interpretation. However, also as noted above, NLADA cosponsors CLE programming with the ABA, which does have a policy that utilizes the language in question.

⁴ See Comments of Florida Bar Public Interest Section, filed 6/29/21, appendix; The ABA also has informed NLADA that it has received the same interpretation from the Florida Bar.

attorneys who have attended high-quality and valuable CLE trainings hosted by the ABA for which they now worry they will not receive credit.⁵

As it is playing out, the rule poses a significant barrier not only to attorneys' ability to receive CLE credit, either as attendees of or as speakers at programming, but to their continued participation with attorneys and organizations across the country.⁶

A. The amended rule reaches beyond Florida-based programming, hindering participation and association with the profession at a national level.

As a national membership organization and to accomplish its mission of ensuring excellence in the delivery of legal services, NLADA strives to connect members in each state with colleagues across the country. The events we hold serve not only to provide CLE credits to attendees and speakers, but also to foster and house a national base for expert advocates to communicate with and learn from each other. Our Florida members often emerge as leaders among this cadre of experts, which spans subject matters as diverse as representation for people experiencing domestic violence,

⁵ See Corrected Comments of Joanne Fanizza, filed 6/29/21, page 2 (citing "excellent" CLE hosted by the ABA).

⁶ Civil legal aid organizations and public defenders have limited budgets for training and conferences, with their ability to attend these events often inextricably tied to the ability to earn CLE credits in their state of practice.

veterans experiencing homelessness, and innovative practices in the utilization of technology. Attorneys from across the country learn from and connect with their colleagues in Florida and Florida attorneys similarly learn from and connect with their peers. The inability to earn CLE credits for these events severely hinders this progress.

One specific example of an event that offers a national platform and opportunity is the annual Equal Justice Conference (EJC). EJC is specifically affected by the rule change because it is an event co-hosted by NLADA and the ABA Standing Committee on Pro Bono and Public Service, an entity of the ABA. For more than 20 years, EJC has been a collaboration and convening of equal justice advocates. The single largest gathering of stakeholders in the civil justice system, each year, the Conference draws upwards of (or more than) 1,000⁷ advocates representing the full array of legal services providers, partners, and supporters for three days of learning, sharing, strategizing, and planning. Attendees include pro bono partners, civil legal aid providers, law school deans and

⁷ This is true even for conferences held virtually in 2020 and 2021.

faculty, civil rights advocates, corporate counsel, judges, and bar leaders from across the country.

The delivery of civil legal aid to low-income and marginalized individuals and communities is changing very rapidly and the ABA and NLADA partner to promote the role of pro bono, explore technology innovations, develop strategic advocacy initiatives, advance community building and legal empowerment, and much more. We believe that access to justice is a critical step in providing the stability, opportunity, and empowerment for communities across the country to advance together.

In addition to consistently offering 21-24 CLE credits *each year* – far more than a single attorney is required to complete in Florida, and a substantial portion of the 33 hours required over three years – EJC programming provides critical training on changes in substantive law, updates on new methods of delivering legal services, unique ways to form pro bono partnerships, and other issues, EJC also serves as an opportunity for the legal services community to come together, to brainstorm, and to build support networks with other organizations from their state and across the country. Recent conferences have drawn upwards of 60

attorneys from Florida, both as attendees and speakers. Additionally, while the Conference's location rotates by geographical region and states within various regions, the ABA and NLADA have chosen Florida to host the Conference twice in the last 12 years. The ability to provide CLE credits to local attorneys and incorporate them into conference programming is a determinative factor in site determination.

The contributions of Florida attorneys to the Conference has been notable and significant over the years, and NLADA is keenly sensitive to the fact that their ability to participate is tied to the Conference's capacity to also provide CLE credits to support their ability to practice in Florida. As noted above, civil legal aid advocates and public defenders have limited budgets for trainings and conferences. Their ability attend these events often are inextricably tied to the ability to earn CLE credits in their state of practice.⁸

NLADA is concerned that the inability to receive CLE credit for an event like EJC would sever an important connection between its members in Florida and the national community of equal justice

⁸ Indeed, it is for this reason that NLADA seeks CLE accreditation for its events, and provides attendance at these events for an extremely discounted registration fee, discounting that fee even more so for members.

advocates, hindering the ability of Florida attorneys to participate in the conversations and learning community provided by the Conference. While this certainly affects Florida attorneys, it has created deep concern about what such a disconnect means for the people they serve and the status of equal justice in Florida.

As written, interpreted, and applied, the amended rule would compel the attorneys who comprise Florida's equal justice community to withdraw from attending events like EJC to allow for their extremely limited training budgets to continue to support their ability to earn CLE credits and remain licensed to practice in Florida. Additionally, if these attorneys do continue to attend events like EJC, they would be denied the CLE credits that attorneys from other states receive for the exact same programming.

B. The amended rule chills national entities from hosting Florida-based events and restricts Florida attorneys' access to national programming.

The effects of the amended rule reach beyond EJC and events hosted or co-hosted by the ABA,⁹ and NLADA is concerned that the application of this rule to CLE providers beyond the Florida Bar will

⁹ NLADA agrees that the rule's effect of precluding ABA-sponsored events from providing CLE credit to Florida attorneys will have a significant impact. See Comments of Florida Bar Public Interest Section, filed 6/29/21, footnote 8 (noting that the ABA offers significant CLE programming at a low cost to attorneys who are most likely to need it).

significantly restrict the depth of CLE programming available to Florida attorneys, a number of which NLADA counts as its members.

NLADA holds as a core value the advancement of diversity, equity, and inclusion in the civil legal aid and public defender sectors, and in the communities they serve. While NLADA does not currently have a policy containing the language contemplated by the amended rule, the commitment to advancing diversity, equity, and inclusion is central to trainings provided through various national events. This is true both with regard to subject matter and the message conveyed through featured speakers and panelists.

Moreover, NLADA centers decisions on how to best promote diversity on evidence-based analyses and practices, and input from members, constituents, and attendees. It is possible that NLADA's current policies on ensuring the quality and effectiveness of programming through diversity, equity and inclusion will evolve in language and scope.

The amended rule, and uncertainty and vagueness over its interpretation and application would significantly affect NLADA's decisions to hold large events in Florida. NLADA has in fact hosted

a number of conferences in Florida cities, including Fort Lauderdale, Jacksonville, and Orlando. Selection of these sites gives great weight to the opportunity to build stronger ties with the local community of advocates and elevate their expertise and perspectives to a national level.

NLADA will not host events in a location in which the local community of advocates could not be provided CLE credit. An inability, or even potential inability, to provide CLE credit to Florida attorneys would therefore prohibit NLADA from hosting future large events in Florida.¹⁰ As a result, the amended rule will limit the training and education opportunities available to Florida attorneys, which in turn will limit their ability to effectively serve their clients.

CONCLUSION

Amended Rule 6-10.3, as written, interpreted, and applied prevents Florida attorneys from taking advantage of CLE opportunities offered by organizations with a national scope.

The rule will hurt Florida attorneys, especially those who have a need for low-cost CLE trainings, such as solo practitioners and

¹⁰ Of course, any time NLADA brings a large event to Florida, this includes coordinating with the local tourism bureaus and local business to enhance patronage by attendees of local services and offerings.

legal aid attorneys. It also makes it more difficult for national organizations such as NLADA to host conferences and meetings in Florida. The result, borne by Florida attorneys and their clients, is isolation from important national conversations, and preclusion from garnering national recognition for their work and expertise.

For these reasons we urge the Florida Supreme Court to repeal its amendment to Rule 6-10.3.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on July 15, 2021, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.

/s/ Christopher Buerger
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the appropriate font and word count limit requirements.

/s/ Christopher Buerger

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