IN THE SUPREME COURT OF FLORIDA

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

Case No. SC21-284

CORRECTED COMMENTS OF THE FLORIDA BAR PUBLIC INTEREST LAW SECTION

The Florida Bar Public Interest Law Section, by and through its undersigned counsel, hereby files the following comments in this matter.

THE FLORIDA BAR PUBLIC INTEREST LAW SECTION

The Florida Bar Public Interest Law Section (PILS), created in 1989, consists of over 400 members of The Florida Bar. It has a great interest in promoting diversity in many aspects of the legal profession, including diversity in speakers at CLE courses. It shares the Business Law Section's (BLS) desire to have a diverse group of CLE speakers, but it has chosen other methods to achieve that goal. Thus, PILS does not have a policy similar to the one employed by BLS that gave rise to the amendment adopted in this case. It has no plans to adopt such a policy. PILS does believe, however, that the wording chosen by this court for the amendment has created some (quite

possibly unintended) negative consequences that will impact on its members as well as all other Florida attorneys.

THE SCOPE OF THESE COMMENTS

These comments will not address whether BLS's policy was[1] in violation of the Constitution. PILS recognizes that without regard to that question, this court has supervisory power over The Florida Bar under Article V, Section 15 of the Florida Constitution, *Liberty Counsel v. Florida Bar Bd. of Governors*, 12 So. 3d 183, 184 (Fla. 2009), and is thus free to amend the Rules Regulating The Florida Bar for whatever reason it chooses—such as a belief that a policy is unconstitutional, a desire to insulate the Bar from a possible lawsuit that might raise a claim of unconstitutionality, or a conclusion that a policy is not appropriate regardless of its constitutionality.

Nor will these comments argue either in favor of or against this court's objective of ensuring that neither The Florida Bar nor any of its entities, such as sections, divisions, and committees, will use a speaker selection process similar to that of BLS.[2] Further, while PILS

[1] It is PILS's understanding that the BLS policy is no longer in effect.
[2] PILS recognizes that this court cannot under its supervisory power simply preclude sections from using a quota policy because the supervisory power does not extend to the regulation of the activities

will use the word "quota" in connection with that and similar policies, it does so because this court used the term. PILS takes no position as to whether such a policy does or not constitute the use of a quota.

Rather, PILS will focus on why this court should, and how this court can, through a clarifying opinion or a change in wording, achieve its objective in a manner that PILS asserts would be better for the lawyers of this state, the legal profession, and the public.[3]

THE IMPACT OF THE AMENDMENT

Upon reviewing this court's decision in this matter, PILS identified several possible negative consequences of the amendment adopted by this court that do not relate to the goal of preventing Bar entities from using a speaker selection process such as that employed by BLS. Because the amended language was open to interpretation in some respects, however, PILS reached out to The Florida Bar to

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of those voluntary entities. *Liberty Counsel*, 12 So.3d at 189. It is clear, however, that the amendment this court adopted will effectively eliminate the use of such policies because it would be economically foolish for sections to present courses that do not carry CLE credit and because, without regard to economics, sections will certainly give great deference to this court's concerns.

[3] PILS is aware that some commenters have, and other commenters likely will, ask this court to change its mind about amending the rule. Should this court find those comments persuasive, there will be no need for it to consider the matters PILS has chosen to address.

see how the Bar would apply the rule as amended. The Bar responded by definitively indicating how it interpreted the rule.[4] These comments therefore address the negative consequences in light of the manner in which the rule will be applied if this court takes no further action on this matter.

As to each consequence, PILS will initially submit that well-settled approaches used to interpret statutes, which also apply to the interpretation of rules,[5] demonstrate that the Bar has misinterpreted the wording of the amendment adopted by this court.[6] PILS will then argue as to each consequence that strong policy reasons demonstrate that it should not be allowed to occur.

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[4] The email communications between PILS and the Bar are set forth in the appendix to these comments at p. 29-30, *infra*. PILS greatly appreciates the fact that the Bar promptly responded in a manner that allows for the issues in this matter to be clearly defined.

[5] "Our courts have long recognized that the rules of construction applicable to statutes also apply to the construction of rules." *Brown v. State*, 715 So. 2d 241, 243 (Fla. 1998) (citations omitted).

[6] PILS does not mean for its arguments in this regard to be viewed as critical of the Bar. It understands that the Bar was in a difficult position. PILS believes it likely that the Bar, knowing PILS would address the issues in its comments, understandably took a restrictive approach to ensure it did not award credit in violation of this court's ruling, secure in the knowledge that PILS's comments would give this court the opportunity to ease the restrictions if it chooses to do so.

A The rule as interpreted by the Bar will preclude Florida attorneys from obtaining CLE credit for attending courses that meet all qualitative requirements and will deter them from attending courses that might offer the most appropriate CLE for them.

1 Misinterpretation

Although the wording of the amendment precludes the Bar's Board of Legal Specialization and Education (BLSE) only from approving CLE courses "submitted by a sponsor" that uses quotas, the Bar has determined it will deny requests for CLE credit submitted by individual attorneys who attend courses presented by such sponsors.

Because the plain language of the rule applies only to courses submitted by sponsors that use quotas, it is PILS's position that the rule should be interpreted to apply only to such submissions, not ones by individuals.

As noted in *State v. Maisonet-Maldonado*, 308 So. 3d 63, 68 (Fla. 2020), "'A court's determination of the meaning of a statute begins with the language of the statute.' *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 (Fla. 2019) (citing *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018)). If the language of the statute is clear, "the statute is given its plain meaning, and the court does not 'look behind the

statute's plain language for legislative intent or resort to rules of statutory construction.'" *Id.* (quoting *City of Parker v. State*, 992 So. 2d 171, 176 (Fla. 2008))."

2 Policy

The practical impact of the Bar's interpretation is to deny CLE credit to Florida attorneys solely because of how sponsors select speakers, despite there being no issue as to the quality of the education the attorneys receive.

In considering this point, PILS asks that this court view the matter through the lens provided by the reasons why the legal profession in general, and this court specifically, requires continuing legal education.

When The Florida Bar petitioned this court to adopt a mandatory CLE requirement, it made those reasons clear. "By requiring lawyers to attend a minimal amount of organized continuing legal education each year, … everyone will benefit." Brief of The Florida Bar, Petitioner, case no. 68,708, p. 7. "The legal profession will be upgraded and the public better served by the adoption of a requirement." *Id.* at 1.

"[S]uch a requirement would encourage lawyers to stay abreast of changes and developments in the law." *Id.* It would "require practitioners to set aside time to concentrate on formal knowledge acquisition." *Id.* at 6 (quoting Report 1984, The Florida Bar Long Range Planning Committee, IV-11).

Relying on the ABA Task Force on Professional Competence Final Report and Recommendations (1983), the Bar's brief stated that "[t]here will be a beneficial effect on the level of legal services because of the educational experience." *Id.* at 7.

This court agreed, stating that the purpose of Florida's mandatory CLE requirement is to "benefit the public by improving the competence of the legal profession." *The Florida Bar re: Amendment to Rules Regulating The Florida Bar (Continuing Legal Educ.)*, 510 So. 2d 583, 584 (Fla. 1987). Consistent with this purpose, Rule Regulating The Florida Bar 6-10.1(a) states that "[i]t is of primary importance to the public and to the members of The Florida Bar that lawyers continue their legal education throughout the period of their active practice of law."

The purpose of the CLE requirement is met regardless of how speakers are chosen for a given course. Whatever the process, the lawyer obtains the education the requirement demands.

Yet, if the amendment adopted by this court is applied in the manner it is being read by the Bar, the deprivation of CLE credit will punish individual lawyers because of the speaker selection process used by the entities presenting courses they take. Moreover, it will deter such lawyers from taking CLE courses they otherwise might take, and benefit from, because they will not receive credit.

PILS suggests that attorneys who receive appropriate education should receive credit for it regardless of the source and that lawyers should be encouraged to take the CLE programs best focused on their needs regardless of the source.

As noted above, the amendment this court adopted will certainly keep entities of The Florida Bar from using quotas in selecting CLE speakers, so attorneys will get CLE credit for courses those groups present. But it should be remembered that Florida attorneys obtain their education from many sources.[7]

[7] Statistics provided to the undersigned counsel by The Florida Bar reflect that the Bar has more than 5,700 providers listed in its system

At least one major provider of CLE, the American Bar Association (ABA), has a policy very similar to the one that gave rise to this proceeding. As a national organization, the ABA offers many outstanding courses that have provided significant benefits to Florida lawyers over the years.

Moreover, the ABA has until now provided an opportunity for Florida lawyers, especially those from groups for which cost tends to be a significant consideration, to meet their CLE requirements in an extremely economical way.[8]

The Bar's interpretation of the rule will therefore keep attorneys from receiving credit for high quality CLE courses offered by entities

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that have at some time submitted applications for CLE credit. This includes 1,253 who did so during the 2020-2021 Bar year. There are several hundred providers who submit the bulk of the CLE credit approval applications, with many of the other providers presenting a small number of programs, perhaps one or two, each year. Of the 1,253 who submitted during the most recent Bar year, 520 submitted three or more courses.

[8] Florida lawyers can easily satisfy their CLE obligations through on-line programming that is available without charge to ABA members. Solo practitioners, small (2 to 5 attorney) firm lawyers, non-profit/public interest lawyers (a category into which many PILS members fall), government lawyers, retirees, inactive lawyers, and all lawyers admitted to practice for five to nine years pay annual dues of $150. Those admitted less than five years and those who are unemployed pay $75. There are also group membership plans available.

such as the ABA, will deter them from even taking those courses, and will deprive attorneys who need it of a significant low-cost avenue of obtaining their CLE.[9]

The approach adopted by the Bar will also effectively deprive Florida lawyers of access to certain live CLE programs, a consideration that will become increasingly significant as the legal profession returns to the sort of programming that has fallen victim to the pandemic. If Florida attorneys cannot obtain CLE credit for programs presented by the ABA or other national providers who

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[9] And it will do these things despite the ABA being a voluntary organization, a fact that would seem to indicate its use of a quota-based speaker selection process would not violate the Constitution, regardless of the question of whether a violation would occur by the use of such a process by an entity of a mandatory Bar.

The voluntary nature of organizations is also a consideration with regard to an additional impact of the amendment. Local and other voluntary bar associations in Florida, law firms, legal services agencies, pro bono volunteer programs, law schools, private companies and other entities, which see attendance at their CLE programs consist almost exclusively of Florida lawyers, may have or wish to adopt policies similar to that of the ABA. Although this court's supervisory power does not extend to them, the rule as currently written would make it financially inconceivable for them to employ such policies. PILS believes that such organizations should not be put in a position that effectively keeps them from utilizing one option for achieving diversity that they might otherwise consider.

might have similar policies, those organizations will stop coming to Florida.

The ABA, for example, usually holds two general meetings each year and its sections, divisions, etc., hold their own meetings as well. CLE programs are often presented in conjunction with meetings. Because of the size and national scope of groups such as the ABA, these programs often attract some of the country's best-known and most knowledgeable speakers on particular subjects, speakers less likely to make themselves available to sections of The Florida Bar.

In order to make their CLE programs financially viable, these groups rely on attendance not just from persons coming to their meetings, but to a great extent from local lawyers. If they cannot count on local participation because lawyers will not receive CLE credit, they will simply meet elsewhere. Thus, programs sufficiently interesting that Florida lawyers might take them regardless of CLE credit will not be available to them unless they travel to out of state locations.[10]

[10] On page 18, Section 1, of the June 2, 2021, South Florida Sun-Sentinel newspaper, Tampa lawyer Sandy Weinberg, a former chair of the ABA Criminal Justice Section, provides a significant example of an event that might not be available to Florida lawyers in the

The loss of quality live programming for the reasons set forth in the preceding paragraph will also have the impact of undermining one of the benefits of a CLE requirement. The quote from the ABA Task Force report on page 7 of the Bar's brief when it sought a mandatory CLE requirement specifically noted that CLE "forces all attorneys into an environment where important learning is likely to occur through informal conduct with other lawyers as well as through the formal education itself." While the growth of on-line and on-demand programming has greatly eroded this benefit over the years, it is still very real, and policies should encourage Florida attorneys to seek it, not limit the possibilities for it.[11]

Moreover, lawyers do not necessarily know how an entity that offers a CLE program chooses its speakers. They may therefore take courses anticipating, as they always have, that they can apply for

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future. Mr. Weinberg notes that an annual ABA program on white-collar crime that typically attracts some 1,200 to 1,500 members might not return to Florida even though Miami is the favorite and most popular location for the event.

[11] This factor will also impact the over 14,000 Florida lawyers that live in other states. They cannot easily attend in-person programming presented by The Florida Bar or its entities. They will not be able to get credit for such ABA programming presented where they live. They will therefore be much more likely to resort to on-line courses.

and receive CLE credit, only to find out that the entity chose speakers in a manner that made the course ineligible.

Thus, the Bar's interpretation puts a burden on Florida's lawyers to inquire into speaker selection processes[12] if they want to be sure that their attendance at CLE programs will result in their receiving credit.

It also imposes an added financial burden on those who do not inquire and end up having to take an additional course to compensate for not receiving the anticipated CLE credit.

Florida lawyers should not have to worry about such matters and should feel free to take the courses that best suit their needs without being concerned that they might not get credit due to a reason unrelated to the quality of the education they receive.

[12] And even inquiry may not yield the information. While it would be easy to determine the policies of the ABA, other sponsors may not be inclined to discuss or reveal their approaches to speaker selection. Moreover, initial contacts at such entities may well not know the answer, which could result in either a delay for them to consult someone who does or an inability to give a definitive response.

B The rule as interpreted by the Bar will diminish the opportunities for Bar entities to cosponsor CLE programs with non-Bar entities.

1 Misinterpretation

Although, as noted above, the wording of the amendment adopted by this court refers only to courses "submitted by a sponsor" using quotas, the Bar has concluded that if a Bar entity that does not use quotas cosponsors a CLE course with an entity that does, the course will not be approved for CLE credit. This will be true even if the course is submitted by the Bar entity that does not use quotas.

The plain language analysis set forth above demonstrates that the Bar's interpretation is not correct.

2 Policy

Under the Bar's interpretation, a program that would otherwise clearly qualify for credit would lose that credit simply because the Bar section cosponsored it with an ABA entity even if the Bar section put together the program entirely on its own and affiliated solely for marketing purposes.

Cosponsorships are important marketing tools for Bar entities. They expand the pool of potential speakers (regardless of any diversity considerations). They make the prospect of speaking more

attractive to potential speakers, thus increasing the likelihood that desired individuals will accept invitations to speak and thereby increasing the quality of programs. They expand the number of people who will receive advertisements or information about programs. They allow for more marketing tie-ins to other programs. They increase attendance at programs. They expose attendees from one entity to the other, which can lead to increased membership.

Thus, the Bar's determination that no credit can be given for cosponsored programs will result in Bar entities, in order to make sure that CLE credit will be available, presenting CLE programs that might not be as strong as they could be and that may not benefit them as much financially. This is a losing proposition for the entities, the attendees and the public.

C The rule as interpreted by the Bar will keep Florida attorneys from receiving CLE credit for courses even when no quotas were used to select speakers.

1 Misinterpretation

The wording of the amendment adopted by this court can reasonably be read in either of two ways. It can be read to preclude the approval of CLE credit for courses in which entities applied a speaker quota policy or it can be read to apply to all courses

presented by an entity with such a policy regardless of whether the policy applied to a particular course. The Bar has adopted the latter interpretation.

It is PILS's position that there is no reasonable rationale for not awarding CLE credit for programs that do not use quotas in selecting speakers, even if they are presented by an entity with a policy calling for such an approach with regard to other programs. There are no constitutional concerns when programs do not use quotas.

PILS thus submits that, as with the matters discussed in the preceding two sections of these comments, albeit under a different analysis, the Bar has misinterpreted the rule. The plain language analysis does not apply here because the language, being subject to two interpretations, is not plain. In such situations, "[a] basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences." *State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002) (citations omitted). It is PILS's position that it would truly be unreasonable to deny CLE credit for courses untainted by a quota selection process just because the sponsor of the program uses such a process in other programs.

2 Policy

The difference between the two possible interpretations of the rule has definite practical ramifications. The ABA policy allows for the granting of exceptions to the speaker selection process. More significantly, the policy only applies when there are at least three presenters at a program. A one- or two-speaker program is not impacted.[13] Speakers for such programs are therefore selected in the exact same manner as they would be without a policy.

There exists no logical reason why CLE credit should not be available for programs of this nature.

To deny credit just because a sponsor has an unused policy on its books would be akin to forcing an athletic team to forfeit all its wins because it played an ineligible player in some of them. In such a situation, forfeits in the games in which the player participated would make sense. Forfeits in the others would just punish the eligible players.

[13] Such courses are not unusual. According to information provided to the undersigned counsel by the ABA, 14 of their 47 applications for Florida CLE credit that were pending on the date of this court's opinion in this cause were for either one- or two-speaker programs.

In the games without the ineligible players, the other members of the team deserve the wins. In the CLE context, the sponsor that does not use its quota system deserves the right to award CLE credit and the attendees deserve the right to receive it. It should be awarded.

D The rule as interpreted by the Bar will keep Florida attorneys from receiving CLE credit for speaking at CLE courses and will deter them from speaking at such courses.

1 Misinterpretation

Florida attorneys receive CLE credit for speaking at CLE programs. The Bar has interpreted the amendment adopted by this court to preclude an attorney from getting credit if his or her presentation is made in a program presented by an entity that uses quotas in selecting speakers. But sponsors do not submit applications for speaker credit. Speakers do. The plain language analysis set forth above therefore demonstrates that the Bar's interpretation is not correct.

2 Policy

Under the Bar's interpretation of the rule, it will not matter if the attorney who speaks at a CLE program is even aware of the process that led to the invitation to speak. The attorney will not be able to obtain credit even though the exact same presentation in a course sponsored by a different entity would result in credit being awarded.

While this consequence will not impact as many lawyers as the consequence relating to attendance at CLE programs, it will have a more severe impact on those who are affected. Preparation for a CLE presentation takes a great deal of time and is therefore worth significantly more CLE hours than is attendance. And the educational process of preparing to speak is identical in nature regardless of how the person preparing was chosen to speak.

This consequence also creates a truly incongruous situation. Speakers who spend many hours preparing, and who therefore get far more education than attendees, will not receive credit, while attendees will (as long as they are not from Florida).

Moreover, the Bar's interpretation will deter lawyers from agreeing to speak at courses sponsored by such entities as the ABA.

Thus, attendees will be deprived of exposure to the expertise that could be offered by many fine attorneys. And the potential speakers may incur a financial burden of having to take CLE courses to provide the equivalent number of credits they would have received from speaking.

E The rule as interpreted by the Bar will keep Florida attorneys from receiving board certification (as opposed to CLE) credit despite the fact that board certification is voluntary while CLE is mandatory.

1 Misinterpretation

This court amended only Rule 6-10.3, which deals with CLE credit, and not Rules 6-3.5(c)(3) and 6.-3.6(b)(2), which deal with board certification. Nonetheless, the Bar has interpreted the amendment this court adopted as precluding not just the approval of CLE credits but also the approval of certification credits for courses sponsored by entities that use quotas.

The Bar has thus concluded that this court amended the certification rules by implication. PILS suggests once again that a rule of statutory construction demonstrates that this conclusion was not correct. As stated by this court in *State v. J.R.M.*, 388 So. 2d 1227, 1229 (Fla. 1980) (citations omitted), "It is well settled that

amendment by implication is not favored and will not be upheld in doubtful cases. … Amendment by implication occurs when it appears that the latter statute was intended as a revision of the subject matter of the former or when there is an irreconcilable repugnancy between the two, so that there is no way the former rule can operate without conflicting with the latter." This standard is not met here because this court certainly did not revise the subject matter of certification and there is no repugnancy, much less an irreconcilable one between the CLE rule as amended and the existing certification rules. Under such circumstances, the two provisions are to be "read in pari materia." *Id.*

2 Policy

Because board certification is a voluntary process, no member of The Florida Bar is required to participate. No one has to accumulate certification credits unless that person has become certified or is seeking to do so. This stands in stark contrast to the situation regarding CLE credits, which are required of all Florida lawyers. Because of certification's voluntary nature, awarding certification credit for courses that use speaker quotas would not raise any constitutional concerns.

Moreover, the impact of not awarding certification credit is significant. Board certified lawyers (and those trying to meet the requirements to seek certification) must obtain many more certification credits than the number of CLE credits that all attorneys must achieve. And because of their expertise, they seek more advanced programs,[14] such as those presented by national organizations, which, unlike Bar entities, will not change speaker policies because Florida will not award certification credit.

The Bar does not dispute that this court did not make any changes to the rules relating to certification, but it still indicates that certification credit will not be provided, stating:

> [R]eviewing programming for certification credit is part of the course approval process of CLE credit. There is no

[14] Although board certification was not discussed in The Florida Bar's brief when it sought the adoption of a mandatory CLE requirement, the brief did include a statement on page 5 that shows the importance of the sort of CLE program certified attorneys are likely to seek. "]E]ven the lawyer who limits practice to a single area of the law cannot deal with the great volume of material produced annually. Thus the concept of CLE, formalized continuing legal education, has evolved. As sponsored by Bar groups, law schools, private concerns or other entities this allows the presentation of seminars by experts on specific areas of the law, thereby permitting lawyers who concentrate on very narrow aspects of these disciplines to share their expertise with other lawyers who do not have the time, resources or ability to synthesize the vast amounts of information."

> separate application or process to review certification credit. When certification credit is awarded it is done so as a part of the CLE credit review and approval process and the certification hours are part of the CLE credit hours.

Appendix, p. 30, *infra*.

In essence, what the Bar is saying is that its procedures have been established in a way that looks to certification credit only after it has been determined that CLE credit should be granted. That approach has made practical sense until now because the two are so intertwined. But, given the fact that this court's amendment has uncoupled them in the situations to which it applies, the mere fact that an administrative process may not be adaptable to the new reality should not preclude the awarding of certification credit.

The lack of "a separate application" can be remedied very simply by creating a separate application. The review process would essentially be the same as it always has been—probably simpler because it would skip the step of formally awarding CLE credit. To say that certification credit cannot be received because no proper form exists is an example of the tail wagging the dog. The answer is not to interpret the change in the rule so that it can fit into the

existing process, but to adapt the process to accommodate the change to the rule.

AVOIDING THE NEGATIVE IMPACTS

PILS submits that this court can reach its objective in a way that does not generate the negative consequences discussed above. It can do so by indicating in an opinion that the amendment it adopted is (1) not intended to preclude the granting of CLE credit when applications for such credit are submitted by individual lawyers, by speakers, or by entities without quota policies that cosponsor programs with ones that do; (2) not intended to apply to courses that do not use quota policies just because the sponsor has such a policy in place for other courses; and (3) not intended to preclude the granting of certification credit.

Another approach would be to slightly change the language used in amending the rule. One way of doing so would be as follows (underlined portions indicate suggested additions to the language added by this court's amendment, while stricken through language indicates suggested deletions):

> The board of legal specialization and education may not approve any course submitted by ~~a sponsor, including a section of~~ The Florida Bar <u>or any entity thereof</u>~~,~~ that uses

> quotas based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants.

Either of these approaches would allow this court to accomplish the objective of effectively keeping Bar entities from using speaker quotas but would eliminate the negative consequences these comments address.

CONCLUSION

Florida has had mandatory CLE for over three decades. No entity of The Florida Bar has ever adopted a quota system for speaker selection until BLS did so recently.

It would be a true disservice to the over 100,000 members of the Bar for this one action by one voluntary section to cause an avalanche of negative consequences for them.

In adopting the amendment at issue, this court cited to cases dealing with school admission policies. No one would suggest that when a school uses an inappropriate policy, the students who are admitted (including those who are admitted without regard to the policy) should be deprived of credit for the classes they successfully complete after admission. Yet, the consequences of the amendment

this court adopted would result in an equivalent deprivation for Florida's lawyers.

And there is no need for such deprivation. This court can achieve its objective in a manner that allows Florida lawyers to obtain their legal education in the manners that best suit their needs. PILS urges it to do so.

Respectfully submitted,

/s/ Anthony C. Musto

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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/ Anthony C. Musto

ANTHONY C. MUSTO

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

/s/ Anthony C. Musto

ANTHONY C. MUSTO

IN THE SUPREME COURT OF FLORIDA

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

Case No. SC21-284

APPENDIX TO COMMENTS OF THE FLORIDA BAR PUBLIC INTEREST LAW SECTION

From: Hill, Terry L <THill@floridabar.org>
Sent: Tuesday, May 18, 2021 9:48 PM
To: Musto, Anthony C. <amusto@STU.EDU>
Cc: Doyle, Joshua <jdoyle@floridabar.org>
Subject: RE: Bar's Interpretation of Amendment to Rules Regarding Speaker Diversity

Tony,

Responses to your inquires are provided below within the body of your email in italics and highlighted text.

I will be out of the office traveling on Florida Bar business for the Board of Governors Meeting in south Florida the remainder of the week. I will return to the office on Monday, May 24.

Thank you.

Terry L. Hill
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From: Musto, Anthony C. <amusto@STU.EDU>
Sent: Friday, May 14, 2021 11:19 AM
To: Doyle, Joshua <jdoyle@floridabar.org>; Hill, Terry L <THill@floridabar.org>
Subject: Bar's Interpretation of Amendment to Rules Regarding Speaker Diversity

Gentlemen, I am not sure to whom this should be directed so I am sending it to both of you, confident that it will be reaching the correct recipient or that you will forward it to that person. As I noted in the previously provided notice to Josh, I will be filing comments on behalf of the Public Interest Law Section with regard to the Florida Supreme Court's recent decision on speaker diversity. It is possible that other sections may join in those comments.

The substance of the comments may well depend on how the Bar is interpreting the language the court used in amending the rule at issue. Thus, I am hoping that you can shed some light on these aspects of the matter so that the comments can be properly focused (and can avoid discussing matters that might not be at issue). So, if you could please give me the Bar's position on the following questions, I would greatly appreciate it. Please assume for all questions that all qualitative and administrative requirements for approval of the courses at issue are met.

1 Since the amendment bars BLSE from approving courses "submitted by a sponsor" that uses quotas, would it be accurate to say that if a section (that does not use quotas) were to cosponsor a course with an entity that uses quotas, the amendment will preclude approval if the submission is made

by the other entity but not if it made by the section? ***No. Any CLE program or course cosponsored by an entity who uses quotas as part of their CLE diversity policy will not be able to be approved by The Florida Bar for CLE Credit.*** If that is not accurate, will the Bar recognize any avenue for approval of such cosponsorships or will the mere fact of cosponsorship compel the denial of requests for approval? ***No. If a cosponsoring organization has quotas as part of their CLE diversity policy, the course cannot be approved by the Bar.***

2 Similarly, given the reference to courses "submitted by a sponsor," if an entity using quotas presents a course but does not submit it for approval, can attorneys who attend obtain CLE credit if they personally submit requests for the awarding of credit? ***No, if the sponsoring organization is not able to get the CLE course approved by The Florida Bar due to a quota-based CLE diversity policy, individual Bar members will NOT be able to self-submit for attendance credit and have it approved.***

3 The language of the amendment can be interpreted in either of two ways. It can be read to mean that if an entity uses quotas at all, none of its courses can be approved. It can also be interpreted to mean that if an entity uses quotas for a particular course, that course cannot be approved. This can make a significant difference if, for instance, a course has a small enough number of speakers that an entity's quota policy does not apply or if the entity makes an exception to its quota policy. Which of these two interpretations (or, if neither, which other interpretation) is the Bar adopting? ***If the sponsoring organization has a quota-based CLE diversity policy, courses submitted to the Bar from the sponsor will not be approved. The Florida Bar is interpreting this to refer to the sponsoring entity as a whole and not individual CLE courses.***

4 Because the amendment is only to Rule 6-10.3, which deals with CLE, and not to Rules 6-3.5(c)(3) and 6-3.6(b)(2), which deal with certification, is the Bar going to continue to award certification (as opposed to CLE) credit for courses presented by entities using quotas? ***No, reviewing programming for certification credit is part of the course approval process for CLE credit. There is no separate application or process to review certification credit. When certification credit is awarded it is done so as part of the CLE credit review and approval process and the certification hours are part of the CLE credit hours.***

5 Is the Bar interpreting the amendment to preclude the granting of CLE credit for lawyers who submit applications for CLE credit for speaking at courses presented by entities who use quotas? ***Yes, if the sponsoring organization is not able to get the CLE course approved by The Florida Bar due to a quota-based CLE diversity policy, Bar members who served as speakers or faculty members will NOT be able to submit for speaker credit and have it approved.***

If any of my questions are not clear, please feel free to contact me for clarification. Thanks for your assistance in this matter. Be well and stay safe.

Tony