

IN THE SUPREME COURT OF FLORIDA

Case No.: SC21-284

IN RE: AMENDMENT TO

RULE REGULATING THE FLORIDA BAR 6-10.3

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**COMMENTS BY THE FLORIDA JUSTICE ASSOCIATION AND
PALM BEACH COUNTY JUSTICE ASSOCIATION**

The Florida Justice Association and Palm Beach County Justice Association [collectively the FJA and PBCJA] submit the following comments to this Court's amendment to Rule 6.10.3(d) of the Rules Regulating the Florida Bar. While we respectfully disagree with this Court's amendment, our role here is not to criticize this Court for its decision. We know this Court carefully deliberated and weighed its decision before amending the Rule.

Instead, we respectfully ask this Court to modify the Rule to distinguish *Florida Bar* sponsored CLE programs from non-Florida Bar sponsored CLE programs. The FJA and PBCJA have implemented legal education programs that promote and prioritize the diversity of ideas, viewpoints, and experiences of our members, our clients, and the communities we serve. Since the global pandemic

that began in early 2020, our organizations have devoted even more resources and efforts to foster diversity in our legal education programs, reflective of a changed legal landscape. This Court’s amendment may have had the unintended effect of limiting our and other like-minded organizations’ abilities to further these efforts at diversity.

I. Background

In this Court’s April 15, 2021 Opinion, this Court stated that “certain means are out of bounds. Quotas based on characteristics like the ones in this policy [the Business Law Section of the Florida Bar’s policy] are antithetical to basic American principles of nondiscrimination.” (Opinion, p. 2) (citing *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003) (“To be narrowly tailored, a race-conscious admissions program cannot use a quota system . . .”); *Regents of University of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (numerical goal or quota “must be rejected” as “facially invalid”).” (Opinion, p. 2). This Court reasoned that, “[i]t is essential that *The Florida Bar* withhold

its approval from continuing legal education programs that are tainted by such discrimination.”) (Opinion, at p. 2) (emphasis added).

Of course, in amending rule 6.10(3)d), this Court invited comment from interested persons. Many of the comments have asked this Court to clarify, amend, or withdraw its Rule.

II. Our organizations’ promotion and prioritization of diversity will be furthered in amending the Rule to distinguish between Florida Bar sponsored programs and non-Florida Bar sponsored programs.

The FJA and PBCJA do not specifically weigh in on the constitutionality of *Florida-Bar* sponsored CLE programs that this Court characterized as “quotas.” And the FJA and PBCJA do not specifically address whether Florida Bar sponsored programs that **require** speakers or presenters to fit within a defined category meet the definition of a “quota.” However, the FJA and PBCJA do express our support for the Comments of the Business Law Section of the Florida Bar, the American Bar Association, and Carlton Fields, P.A. regarding these legal issues.

Our narrow focus here, though, is the issue of CLE programs that are not sponsored or organized by the Florida Bar, or a section of the Florida Bar. More specifically, our focus is on our organizations, and others like ours across the State of Florida, whose only nexus to the Florida Bar is that we aim to have our programs qualify for CLE credit.

Our organizations promote and prioritize diversity in our legal education programs. Our organizations want our presenters and speakers to reflect the diversity of ideas and experiences that reflect our membership, our potential members, the clients we serve, and the community. Yes, in some instances, this has meant selective targeting for presentations; for example, at one Palm Beach County webinar in 2020 that I coordinated, I specifically noted at the outset of the webinar, a program addressing legal issues representing victims of sexual assault, that we had targeted an all-female panel as a first for our organization. (the PBCJA also commemorated our

organization's first female President, Ms. Adriana Gonzalez, Esq.).¹ For our recent FJA Annual Convention, the organizers for our programs ensured that our speakers reflected a diversity of experiences and ideas, which included considerations [not exclusive or special considerations] for race and gender, to name a few of the considerations.

The good-hearted people in our organizations, both employees and volunteer members, work hard to find speakers and presenters who will provide diverse viewpoints, experiences, and ideas for our members in their legal education programs. We have much more to achieve in the future, but our organizations are committed to diversity not for the sake of diversity, but because it enriches the educational experiences for each of our members, which in turn benefits our clients and our community.

While neither of our organizations have (or had) policies analogous to the Business Law Section policy that led to this Court's

¹ The FJA presently has its third female President, Ms. Tiffany Faddis, Esq.

Opinion, we join with the Business Law Section, and many other interested parties, in fostering a commitment to diversity. There is, though, a clear distinction between Florida Bar sponsored programs from Sections of the Florida Bar, and non-Florida Bar sponsored programs. FJA and PBCJA membership is entirely voluntary, for attorney members, paralegal or legal assistant members, or citizen members. The FJA and PBCJA mission statements are similar, and we hope that attorneys and others who share the ideals of our mission statements join our respective organizations. Still, membership is entirely voluntary.

We recognize that when our legal education programs are approved for CLE credit, the Florida Bar is tied to these programs. This connection is very slight. The Florida Bar does not expressly or implicitly approve the specific content of our programs that we submit for CLE credit. The Florida Bar does not expressly or implicitly approve the characteristics of our presenters or speakers for our legal education programs. We do not list race, gender, or any demographics of our presenters or speakers when we seek CLE

credit. We provide a summary of the program, and there is, of course, an approval process to ensure that our legal education programs meet the accreditation standards. *See also* Comments of the Business Law Section of the Florida Bar, at p. 16, filed on July 13, 2021 (quoting and discussing the Florida Bar’s CLE Accreditation Standards). The Florida Bar is not *sponsoring* the legal education programs conducted by our organizations, or the many other like-minded organizations across the State. We submit that the Florida Bar is not signaling its approval for the diversity choices we make in our organizations’ speakers or presenters, simply in the process of considering and giving CLE credit for our legal education programs. Because Florida Bar approval is not given in the first instance, there the Florida Bar does not need to withhold anything in this accreditation process for non-Florida Bar sponsored programs from organizations like ours and others in this State.

Thus, we respectfully ask the Court to modify the language of the rule to distinguish between Florida-Bar sponsored programs and non-Florida Bar sponsored programs. At least two interested parties

have submitted proposed amendments that reflect this distinction. For example, the Florida Bar Public Interest Law Section's proposed rule amendment reads as follows:

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.

(Comment of The Florida Bar Public Interest Law Section, at pp. 24-25, filed June 29, 2021). The Florida Bar Health Law Section's proposed rule amendment reads as follows:

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.

(Comment of The Florida Bar Health Law Section, at p. 7, filed July 2, 2021). (emphasis added). These proposed amendments carefully

and properly draw a line between Florida Bar and non-Florida Bar sponsored programs. Accordingly, we hope that this Court will modify rule 6-10.3 to reflect this distinction.

III. Conclusion

The FJA and PBCJA promote and prioritize diversity, including in our legal education programs. This Court's Rule may have had the unintended effect to make it more difficult for our organizations, and others across the State, to continue in this vital mission. We hope this Court amends Rule 6-10.3 to distinguish between Florida Bar and non-Florida Bar sponsored programs. Organizations not directly tied to the Florida Bar should be able to target presenters and speakers that reflect the diversity of viewpoints and experiences across our entire legal profession and greater community. In turn, the legal community, our clients, and our entire State is enriched by this diversity.

[Certificate of Service on next page]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of July 2021, the foregoing was filed with the Florida Courts E-Filing Portal.

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On behalf of the Florida Justice
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