

IN THE
Supreme Court of Florida
Case No.: SC21-284

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

**COMMENTS OF TRICIA “CK” HOFFLER, PRESIDENT, NATIONAL
BAR ASSOCIATION**

This comment serves as an objection to the Court’s proposed amendment to Florida Bar Rule 6-10.3(d). The Business Law Section of the Florida Bar adopted a policy regulating the composition of the faculty at section-sponsored continuing legal education (CLE) programs to ensure diversity (the “CLE Diversity Policy”). The new CLE Diversity Policy mirrors, in large part, an American Bar Association (ABA) policy that took effect in March 2017. The ABA policy and the Florida Bar’s CLE Diversity Policy are each designed to promote diversity by ensuring that individual CLE programs include representation from one or more “diverse” groups, defined as “race, ethnicity, gender, sexual orientation, gender identity, and disability.” This Court, *on its own motion*, and without any aggrieved person challenging the implementation of the CLE Diversity Policy, has decided to inhibit the Florida Bar’s effort to ensure diversity and inclusion.

I am licensed to practice in the state of Florida and I presently serve as the President of the National Bar Association (NBA). The NBA is the nation’s oldest and largest national network of predominantly African-American attorneys and judges. The NBA represents the interests of approximately 66,000 lawyers, judges, law professors, and law students. In 1925,

African-American attorneys founded the NBA, due in large part, because of African-American attorneys' exclusion from the ABA. See J. Clay Smith, Jr., *The Black Bar Association and Civil Rights*, 15 CREIGHTON L. REV. 651, 654 (1982). Today, there remains a need to ensure the inclusion of African American attorneys in the legal field and include African American attorneys in the discussion of legal issues. In 2016, under the leadership of Paulette Brown, the ABA took a bold step in implementing a policy to ensure diversity and inclusion in CLE programing. Paulette Brown is the only woman to serve as president of both the ABA and the NBA. The objective of the ABA policy and the Florida CLE Diversity Policy is not to exclude anyone, *but to ensure inclusion*. No one is displaced nor denied an opportunity to participate because of these new policies.

While this Court recognized and asserted it understood “the objectives underlying the policy at issue here,” the Court took the extraordinary step *on its own motion* to abolish the CLE Diversity Policy. Moreover, the Court relies on *Grutter v. Bollinger*, 539 U.S. 303 (2003) and *Regents of University of Cal. v. Bakke*, 438 U.S. 265 (1978), which are both concerned with excluding individuals who are not in the protected status. Respectfully, the Court’s reliance on these cases is misplaced, and its interpretation that having diversity on panels constitutes “quotas” is inaccurate. The CLE Diversity Policy does not exclude anyone, but it is designed to include underrepresented persons in CLE programs and furthers a commitment to diversity and inclusion. While the United States Supreme Court was concerned with a scenario where a “minority” received a slot, and a non-minority was denied a slot – no one under either of these policies is being “denied” participation which *Bakke* prohibits.

I respectfully request that this Court reconsider its decision and withdraw its Order and proposed rule changes.

Respectfully submitted,



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