

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SC05-1150

IN RE: PETITION TO AMEND
RULE 4-1.5(f)(4)(B) OF THE
RULES OF PROFESSIONAL CONDUCT

RESPONSE OF STEPHEN F. CAIN,
ESQUIRE IN OPPOSITION TO PETITION

The following comments are submitted in response to the Petition to Amend Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct pursuant to this Court's order dated June 29, 2005.

As a practicing attorney who has handled medical malpractice cases on behalf of victims and their families, as well as the various defendants to such actions, I find the stated purpose of the petition – to prevent unethical behavior on the part of attorneys – patently offensive and disingenuous.

The Petitioners in this case are not independent members of the Bar who seek to use the petition process to further the stated purpose of The Florida Bar "...to improve the administration of justice..."¹ Rather, the Petitioners in this case seek to hijack the petition process to serve the interests of their clients, including

¹ See Rule 1-2, Rules Regulating The Florida Bar

the FMA and medical malpractice insurers,² who have utilized the services of the vast majority of the Petitioners in their repeated efforts to restrict the rights of the very people their petition purports to protect. The proposed rule change is the modern day equivalent of “snake oil” for victims of malpractice – providing the promise of an increased return on medical malpractice recoveries – with the Petitioners and their clients being the “snake oil salesmen” – who reap a financial windfall at the expense of the victims’ rights.

The reality for victims of medical malpractice is that the proposed rule change will have the practical effect of eliminating their access to justice. The economic realities will make it impossible for victims to find lawyers willing to expend on average \$100,000 to \$150,000 in litigation costs and the hundreds of man-hours necessary to pursue their claims. In the end the promise of increased returns on recoveries that the Petitioners assert will be realized by approval of the rule change will be nothing but an “empty promise.”

In addition to the issues outlined above, numerous other issues warranting dismissal of the petition have been raised in the responses and comments filed by lawyers and concerned citizens in this matter. I respectfully join in the many comments and responses asserting additional grounds for the denial of the petition

² The petitioning lawyers include: three employees of the FMA, 19 lawyers of Holland and Knight LLP, counsel for the FMA, 21 current or former lobbyists who have represented tort “reform” advocates, three lawyers employed by FPIC, Florida’s largest medical malpractice insurer, and 11 lawyers from Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., the lobbyists for FPIC.

on the basis that the proposed rule change (a) violates basic constitutional rights guaranteed under the Federal Constitution, including freedom to contract, due process, freedom of association, and equal protection, (b) improperly prevents waiver of constitutional rights, (c) is an improper use of the petition process, and (d) improperly interprets the provisions of Amendment 3 as limits on attorney fees.

WHEREFORE, STEPHEN F. CAIN, ESQUIRE, respectfully requests that this Honorable Court enter an order denying the Petition.

I HEREBY CERTIFY that the original, as well as nine copies, were furnished by Federal Express to the Clerk of The Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399-1927 and was electronically filed (e-file@flcourts.org), as well as a copy being sent by Federal Express to the Executive Director/General Counsel of The Florida Bar, John F. Harness, Jr., 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Counsel for Petitioner, Stephen H. Grimes, Holland and Knight, LLP, 315 S. Calhoun Street, Suite 600, Tallahassee, Florida 32301, this ____ day of September, 2005.

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