

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SCO5-1150

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

RESPONSE TO PETITION BY TODD E. COPELAND, ESQ.

It is with the utmost respect and concern that I write this Response to the Petition filed by former Justice Grimes seeking to amend the Florida Rules of Professional Conduct Rule 1.15(f)(4)(B).

INHERENT CONFLICT OF INTEREST

I have now had an opportunity to review the Petition and I have reviewed with interest the names of all of the lawyers who signed the Petition, the law firms they are associated with and I have had to go outside of the actual petition to ascertain that in fact the Petition was filed for and on behalf of the advocacy of a

client of many of these attorneys, The Florida Medical Association. Particularly of concern is the fact that many of the signatures on the Petition are from paid lobbyists, consultants or lawyers for the FMA. I would respectfully submit that this Petition should be given the little weight it deserves given the true motives of the Petitioners and the FMA which is to eliminate any competent and meaningful access to courts for the victims of medical malpractice injuries. Such a Petition stands in opposition to the fundamental purpose of The Florida Bar as stated in the Rules Regulating The Florida Bar 1-2. "to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence." It is this attorney's position that an inherent conflict of interest exists when such Petitioners take action not for the principles espoused by the Florida Bar for and on behalf of the petition process but instead for and at the behest of a client who wants nothing more than to gain an advantage during the litigation process if their amendment were adopted.

PUBLIC POLICY CONCERNS

The FMA-backed petition should be rejected as against public policy. The Court should consider whether it wants to restrict a persons' ability to waive their constitutional right to contract with a lawyer of their choosing. I would suggest that this is a slippery slope to embark upon as constitutional rights are waived every day in our state, this is a very basic right of citizenship under both the

Florida and the United States Constitutions – the right to knowingly waive one constitutional right, in order to more fully exercise another such right more valuable to the holder of both of those rights.

Moreover, the intended effect of such petition is to eliminate knowledgeable and experienced attorneys from representing the citizens of our state who fall victim to medical negligence. Medical negligence actions are currently highly regulated and to navigate through the extensive and complicated process competent counsel is required. The Amendment 3 Campaign featured former Justice Grimes as the lawyer for the FMA throughout the process. The entire Amendment 3 campaign was nothing more than an attempt to smear the legal profession and to make it near impossible for a client to find a lawyer who will accept a medical malpractice case on a contingency fee basis. The real goal of this Petition and the petitioners is to limit the ability for a person to seek redress for a medical negligence action. This is a misuse of the petition process and contrary to the policy of The Florida Bar and the public policy of the State of Florida.

FLORIDA BAR CONCERNS

As attorneys we should be concerned about this Petition and the precedent it may set for special interest groups to infiltrate our ranks and influence the very independence we have enjoyed for decades. We create our own rules and enforce our own conduct violations with the betterment of the public in mind. We exercise

our collective judgment on behalf of the bar members and in favor of the public good. This particular Petition exemplifies what could become of the petition process when an inherent conflict of interest overrides the principles behind The Rules of Professional Conduct.

CONCLUSION

This Honorable Court should disapprove this Petition to amend Rule 4-1.5(f)(4)(B). This Petition is no more than a veiled attempt by the FMA to eliminate medical malpractice lawsuits. The entire petition process has been compromised because of the inherent conflict of interest of the petitioners. I would respectfully request this Court to turn its back on the FMA's attempt to interject itself in Bar governance and to stand behind the true principles espoused in the Purpose to The Rules Regulating the Florida Bar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. regular mail this 30th day of September, 2005 to : John Harkness, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 and Stephen H. Grimes, Counsel for the Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810.

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