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 TO PETITION BY GARY M. FARMER, JR., ESQ.

This is a Response to the Petition filed by the Florida Medical Association (AFMA@), by and through its paid attorney and lobbyist, former Justice Grimes, seeking to amend the Florida Rules of Professional Conduct, Rule 4-1.5(f)(4)(B). For what I believe to be very obvious reasons, based largely upon important Constitutional principals and protection of the Bar=s independence, the Petition should be denied.

First and foremost, I believe the procedure which has been undertaken in this instance to be totally inappropriate. Former Justice Grimes and the other attorneys who signed the Petition are advocates for a client not disclosed in the Petition, the FMA, who has been at longstanding war with attorneys regarding medical malpractice litigation. It was the FMA that proposed Amendment 3 to the Florida Constitution and they now seek to implement a change to the rules that govern professional conduct by attorneys in the state of Florida. This is outrageous. The Florida Bar has a long history of independence and is unique to almost any other profession within the state of Florida. No other organization polices its own membership and mandates strict rules of professional conduct the way The Florida Bar does. It has never been the policy of The Bar to implement Rules of Professional Conduct which merely benefit one small segment of the population, even where that segment of the population may be wealthy, well connected or allied with powerful elected officials. Clearly this Petition is being

advanced by a group of people (the FMA and its membership) who are not concerned with the best interest of the state of Florida or the implementation of sound policy governing the professional conduct of attorneys; rather, this Petition strikes at the very heart of the independence that has been a hallmark of The Florida Bar.

In reality, the Petition is nothing more than a poorly disguised attempt to effectuate that which has been the FMA=s main goal for at least a decade B eliminate the ability of the citizens of the state of Florida to have meaningful access to the civil court system for redress of their medical negligence injuries. This Petition, and indeed the original Amendment 3 drive, follows years of legislative activity by the FMA and its attempts, in 1986 and again in 1988, to implement a hard cap on non-economic damages. They failed in those years, and decided that, rather than attack the compensation that would enure to the benefit of clients, they would this time attempt to limit the fees to be charged by the attorneys who represent those clients. By so limiting the attorney=s fees in the most complex and expensive civil cases to handle, the FMA seeks to make it financially impossible for qualified malpractice attorneys to accept complex medical malpractice cases on a contingency fee basis. Knowing that the typical medical malpractice plaintiff does not possess the resources to pay his or her attorney an hourly rate, the FMA knows that by unreasonably capping the fees clients will not be able to retain counsel at all B thereby insulating the doctors from lawsuits, no matter how meritorious. This Petition strikes at the very heart of Florida=s longstanding and sacred dedication to open access to the courts, and would have a chilling effect on people=s ability to seek redress for medical negligence injuries.

Perhaps more disturbing is the elitist attitude which underpins this Petition.

Constitutional rights relating to life and liberty are waived each and every day. A criminal defendant can waive his or her right to speedy trial, advice of counsel, the right against self-incrimination, etc. The waiver of these rights can often carry with it very dire and costly consequences, in the form of incarceration or even death. This Court has never been asked to declare that an individual may not waive his or her constitutional rights which affect their very life or liberty. Yet, the FMA and its paid attorneys and lobbyists seek to have this Court implement a rule which will make attorneys= fees in a medical malpractice case sacrosanct, over and above rights related to life and liberties described above, not to mention many others. Certainly if a person can waive his or her constitutional rights pertaining to their own life or liberty, that person can surely waive a contract right regarding compensation to be paid an attorney. It is an insult to the citizens of this State to even suggest that they are capable of incarcerating themselves or even ensuring death, but they need mandatory regulation regarding contract rights.

I have been to the Court=s website and have read some of the Responses that have been filed so far. Many learned and articulate scholars have recited for the Court the myriad of legal reasons, based on precedent, as to why this Petition should be rejected. I will not waste the Court and its staff=s time by repeating those arguments here. In conclusion, I believe it to be fairly obvious that this Petition must be rejected for a plethora of reasons, only some of which have been stated in this Response. I urge the Court to protect the civil justice system and that right which sets us apart from nearly every other nation in the world B the unfettered right of access to court to seek redress for a wrong. Doctors are no better than accountants, bus drivers or ditch diggers B if they do something wrong, they should be held accountable,

and citizens should not be restricted from obtaining counsel by a Bar rule. Thank you for your time and consideration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this 29th day of September, 2005, to John F. Harkness, Jr., Executive Director of The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; and Stephen H. Grimes, Esq., P.O. Drawer 810, Tallahassee, FL 32302.

Respectfully submitted,

Gary M. Farmer, Jr.