

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 STEPHEN A. MARINO, JR., ESQ.

Responding to the Court’s invitation for comments on the Petition filed by former Justice Grimes seeking to amend the Florida Rules of Professional Conduct Rule 1.15(f)(4)(B) (“the Petition”), Stephen A. Marino, Jr., Esq., states:

This Court should reject the Petition for two primary reasons: first, because it seeks to interfere with an individual’s personal rights (including his or her ability to waive those rights), and second, because it conflicts with the Florida Bar’s ability to impartially regulate the attorneys practicing in this state.¹

Florida law respects a person’s fundamental freedom to enter into contracts. Included within that fundamental freedom is the ability to waive

¹ As the Court is undoubtedly aware, Justice Grimes was counsel of record for the Florida Medical Association with respect to the constitutionality of Amendments 3, 7 and 8. The driving force behind the Petition should therefore be a mystery to no one.

one's rights, such as agreeing to arbitration (and thereby waiving the right to have a conflict determined by a jury). The Petition seeks to add to the restrictions recently imposed under Amendment 3 by making it impossible for a medical malpractice victim to waive his or her right to contract with the lawyer of their choice and, if necessary, waive the rights recently granted under Amendment 3.

The Petition also conflicts with the Florida Bar's ability to impartially regulate the practice of law in this state. The Florida Bar is charged with regulating the conduct of attorneys and ensuring that they act in a manner consistent with the public's well being. The Petition would insert into the rules for professional conduct an unnecessary restriction crafted by a special interest group to serve its private ends. Any act by this Court other than an outright denial of the Petition may be interpreted as a tacit approval for improperly motivated attorneys to offer similarly self-interested amendments to the rules of professional conduct.

CONCLUSION

The Petition is little more than an improper effort by a special interest group to boot-strap additional regulation onto Amendment 3. The relief sought in the Petition should be refused because it interferes with an individual's fundamental right to enter into contracts. The Petition should

also be denied because it conflicts with the Florida Bar's ability to independently regulate the practice of law. For these reasons, as well as those asserted by numerous other lawyers, the Court should deny the Petition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery and/or 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 Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810.

Respectfully submitted,

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By: _____
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