

Supreme Court of Florida

Case No. SC05-1150

In Re Petition to Amend Rules
Regulating The Florida Bar,
Rule 4-1.5(f)(4)(B) of the
Rules of Professional Conduct./

RESPONSE TO PETITION BY NICHOLAS M. MATASSINI,
ESQUIRE

This is a Response to the Petition filed by former Justice Grimes that seeks to amend the Florida Rules of Professional Conduct Rule 1.5(f)(4)(B). If given effect, the Grimes Petition would make an inappropriate change to substantive law by changing rules that regulate professional conduct. I file this Response as both an attorney and as a citizen who is concerned about the eroding rights of free and open access to the Courts of this State. While I am an active member of various professional associations, this Response does not necessarily reflect the views of these organizations and is not being filed to imply that such is the case.

My practice areas are focused on medical malpractice, personal injury and wrongful death. My practice frequently includes helping people who have become disabled due to the negligence of others. I experience first hand how injured clients can benefit and dramatically improve the quality of their lives upon the

receipt of a settlement award. In this regard, I strongly believe that no action should be taken on any front that will reduce the ability of such injured people to have a fair and honest hearing of their grievances before a jury of their peers. I equally believe that, if granted, the Grimes Petition will reduce this ability.

In addition to my philosophical objections, and my belief that the relief sought in this Petition will play its own unique role in eroding our democracy, I note at least two practical problems for consideration that argue against it. The Comment to Rule 4-1.1 of the Rules Regulating the Florida Bar, which speaks to competent representation, provides in part that: “Competent handling of a particular matter includes . . . adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.”

Since medical malpractice cases typically involve complex factual issues and present major litigation, attorneys who litigate these cases devote considerable time and attention so as to provide competent representation. If the Grimes Petition is granted, it will become a financial impossibility for these attorneys to devote the time and attention necessary for competent representation. At this juncture, they will be faced with the unpleasant decision of violating the current Bar Rules or of declining representation. I have full faith and confidence that the

majority of the Bar will decline representation under these circumstances, both in fairness to a potential client and in fulfillment of their ethical obligations. I fear, however, that proponents of the Grimes Petition share this same faith and confidence, and that this is in fact what has led them to file the Petition in the first place. The true proponent behind the Grimes Petition is the Florida Medical Association, and it seems evident from its long history that this entity wants to eliminate medical malpractice lawsuits entirely.

The second practical problem is that lawyers defending persons or entities charged with medical malpractice have absolutely no limitation on the fees they can charge in defending even the most meritorious of claims. This uneven battlefield will impair the ability of victims of medical malpractice to play on a level playing field. Access to the courts and equal protection would be reduced to meaningless phrases.

CONCLUSION

If the Grimes Petition is successful, many victims of medical malpractice will not have free and open access to the Courts of this State because no attorney will be able to offer competent representation. The Petition is nothing more than a bold effort to thwart justice by severely limiting access to the Courts for those wrongly injured due to medical malpractice. It would constitute bad public policy

and would run counter to the very democratic ideals on which this nation was founded. For these reasons, this Honorable Court should deny the request to modify Rule 1.5(f)(4)(B).

Respectfully submitted,

Nicholas M. Matassini, Esquire
The Matassini Law Firm, P.A.
2811 W. Kennedy Blvd.
Tampa, Florida 33609
(813) 879-6227
Florida Bar Number
219916

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 and Stephen H. Grimes, Counsel for Petitioners, Holland & Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810 on this the 28th day of September, 2005.

By: _____
NICHOLAS M. MATASSINI

