

SUPREME COURT OF FLORIDA

CASE NO: SC05-1150

In Re: Petition to Amend Rules
regulating The Florida Bar -
Rule 1-1.5(f)(4)(B) of the
Rules of Professional Conduct.

JEFFERSON MORROW, ATTORNEY, FLORIDA BAR NO. 369136 OBJECTIONS TO PROPOSED AMENDMENT

The undersigned member of The Florida Bar, Jefferson W. Morrow, Florida Bar No: 369136, respectfully submits the following objections to the proposed Amendment to the Rules Regulating The Florida Bar - Rule 4-15(f)(4)(B) of the Rules of Professional Conduct.

1. Clearly, this Petition should be dismissed because it represents an effort by special interests to change substantive law to achieve political ends (impairing access of medical malpractice victims to qualified counsel) under the guise of regulating The Florida Bar; it relies on an untested interpretation of Amendment 3. This repugnant argument smacks of charlatanism.

2. Justice Lewis' dissent from this Court's opinion upholding the ballot summary for Amendment 3 peers through their smoke and mirrors.

Clearly, the proposed Amendment as written portrays that it will provide protection for citizens by ensuring that they will actually personally receive a deceptive amount of all money determined as damages in any medical

liability action. However, the amendment actually has the singular and only purpose of impeding a citizen's access to the courts and that citizen's right and ability to secure representation for a redress of injuries. Its purpose is to restrict a citizen's right to retain counsel of his or her choice on terms chosen by the citizen and selected counsel and to thereby negatively impact the right of Florida citizens to seek redress for injuries sustained by medical malpractice. This is truly a wolf in sheep's clothing.

Advisory Opinion to the Attorney General Re: The Medical Liability Claimant's Compensation Amendment, 880 So. 2d 675 683 (Fla. 2004, Lewis, J., dissenting)

3. Having now realized that a medical negligence claimant's right to receive a certain portion of damages, as ostensibly safeguarded by Amendment 3, may be the subject of an informed and advantageous waiver,¹ and now apparently recognizing that the amendment may be constitutionally infirm, and that the Rules Regulating The Florida Bar already provide a procedure to regulate the propriety of waiver of fee caps under appropriate circumstances,² the same special interests who dressed up Amendment 3 in sheep's clothing for purposes of the ballot now seek, in essence, to rewrite the Amendment. However, substantive legal matters

¹ See, e.g., Shingleton v. Bussey, 223 So. 2d 713, 718 (Fla. 1969); Bowles v. Singletary, 698 So. 2d 1201 (Fla. 1997); and Larson v. State, 572 So. 2d 1368, 1371 (Fla. 1991).

² See Rule 4-1.5(f)(4)(B)(ii) of The Rules Regulating The Florida Bar, applicable in situations where the client is unable to obtain an attorney of the client's choice because of fee limitations.

bearing on constitutional issues like access to counsel and to the Courts are better addressed through conventional litigation. The constitutionality of Amendment 3 has not yet been tested by the Courts, nor has the operation of the Amendment been interpreted. This Court's regulatory function should not be co-opted to preempt adjudication of challenges to the Amendment. The preamble to the Rules of Professional Conduct goes to some length to emphasize the proper function of those rules within the broader context of substantive law.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. . . . The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra disciplinary consequences of violating such duty.

Preamble, Rules Regulating The Florida Bar.

4. The Petition at issue asks this Court, in essence, to revise Amendment 3 to preempt conventional constitutional challenges to the Amendment, and to deprive medical negligence claimants of their prerogative to seek counsel on terms of their own choosing. This Court should decline to permit the Rules of Professional Conduct to become a political tool to implement the deception (as foretold by Justice Lewis) foisted on the public in the form of Amendment 3.

5. The undersigned attorney respectfully urges this Court to dismiss or deny the Petition in question.

JEFFERSON W. MORROW

JEFFERSON W. MORROW
Florida Bar No.: 369136
1301 Riverplace Boulevard, Suite #2600
Jacksonville, Florida 32207
(904 399-5626)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on John F. Harkness, Jr., General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and on Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, LLP, P.O. Drawer 810, Tallahassee, Florida 32302-0810, by U.S. mail, this ___ day of August, 2005.

JEFFERSON W. MORROW