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 R. GENE ODOM, ESQ.

I am filing this response in opposition to the Petition filed by Justice Grimes that seeks to amend the Florida Rules of Professional Conduct Rule 1.15(f)(4)(B). There is no question that the proposed amendment will destroy the practice of medical malpractice law in the state of Florida and will only serve to increase the incidence of unqualified lawyers filing medical malpractice cases. The quality of the practice of law, especially in the field of medical malpractice, will dramatically decrease and a patient's ability to seek out competent representation following even the most drastic instances of malpractice will be eliminated.

In my practice, I have two law partners, one with a medical degree and one with an Engineering degree. We currently handle a caseload of 5-10 medical malpractice cases at any one time in addition to the rest of our caseload. If this amendment were enacted we would not financially be able to take any more medical malpractice cases. A basic understanding of the procedure to handle a medical malpractice case from start to finish should

make it abundantly clear that enacting this proposed rule would force every competent medical malpractice lawyer to stop taking medical malpractice cases. In my practice, as well as in every other practice that I am aware of, medical malpractice cases or more expensive to prosecute and have a higher incidence of actually going to trial than any other type of tort case. Medical malpractice cases are heavily defended and the issues that arise in these cases are more complicated that virtually any other type of tort case.

It is not uncommon to spend anywhere from $ 100,000.00 to $ 500,000.00 in costs preparing to take a case to trial. Those costs are solely at the risk of the attorney who is bringing the action. If this amendment were to pass no prudent businessperson would be able take that kind of risk. The end result would be that, if a case were taken to trial, the representation and preparation would be less than adequate and the client would not be able to obtain justice. Defense attorneys, on the other hand, do not have any legally imposed restrictions on the costs that they can front in any particular case or on the time that they can spend preparing a case for trial. The end result by enacting this rule change would be to give the defendant, who in essence is the malpractice insurance carrier, a huge leg up in the war of attrition. That is simply not fair!

By reading between the lines there is no question that the intent of this amended rule change is to substantially limit a patient's ability to find competent representation thereby decreasing the payout of claims by the insurance industry. This rule change would force the patient either to obtain inadequate and under-funded legal counsel or to go without any ability to have access to the courts whatsoever. It is vitally important that the intent of the proposed rule change be determined. Additionally the question of what good will come from enacting this rule change versus what potential down falls exist must be cautiously examined. The only answer to these questions is that by enacting this rule patients who are truly harmed by medical malpractice will be left without redress.

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 23rd 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.

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