

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 ERIC ROMANO

I write to express my comments regarding the above petition filed by Former Justice Grimes. For the reasons set forth below, the proposed amendment is misguided, procedurally improper and a drastic restriction on the rights of Florida's citizens, and this Court should reject it.

Let me first say that I have the utmost respect and admiration for doctors and medical providers. Nobody can dispute the service and dedication that they provide to society. My grandfather and uncle were doctors. My brother is a doctor. My aunt is a nurse. Many of my close friends are doctors, nurses or medical assistants. I understand and appreciate their concerns, sacrifices and difficulties. Yet I am deeply troubled at the political agenda advanced by the medical profession as a whole. With this background in mind, I offer the following comments.

Improper attempt to manipulate the Rules of Professional Conduct

This petition is a thinly veiled attempt to advance the political agenda of a specific client by changing the rules intended to regulate lawyer conduct. The Rules of Professional Conduct are designed to foster ethical and professional conduct by attorneys and to regulate the legal profession. They should not serve as an extra weapon in the arsenal of lobbyists and special interests. A special interest group should not be permitted to advance its own self-serving agenda by manipulating the Rules. It is no secret that this petition was filed on behalf of and at the urging of the Florida Medical Association (FMA) and its members in order to further the draconian limits on the rights of Floridians that were imposed by the passage of Amendment 3. With its petition, the FMA seeks to improperly employ a procedural device that is reserved to members of the Florida Bar in order to advance its own agenda. The Rules should not be so easily manipulated.

Public Policy considerations

This petition is nothing more than a continuation of the deceptive campaign waged by the FMA in support of Amendment 3. The ultimate objective of the campaign and

the FMA's agenda is to eliminate the right of injured patients to hold medical providers accountable for medical errors and misconduct. The FMA has repeatedly cried wolf by screaming about a so-called medical malpractice "crisis". I do not dispute that medical malpractice insurance premiums have skyrocketed. However, rather than focusing on the real causes of the problem, such as insurance companies' endless thirst for higher profit margins, the FMA has chosen to attack lawyers. Rather than looking in the mirror to address problems within its own profession, such as insufficient disciplinary enforcement, the FMA has chosen to strip patients of their rights. Make no mistake - like Amendment 3, this petition is about one thing only - to prevent injured victims from finding a qualified attorney willing to take their case.

The current Rule 4-1.5(f)(4)(B) is intended to ensure that the fee charged by an attorney in a contingent fee case is reasonable. This petition attempts to change the definition of what constitutes a reasonable fee in a medical liability case in order to suit the selfish interests of the medical profession - not to be more fair to patients, but to insulate doctors from lawsuits. A victim of medical malpractice should be able to decide what fee to pay to his/her attorney, as long as that fee is

reasonable under the current rule, and even if that fee is more than what Amendment 3 provides.

Every citizen is granted certain rights by both the U.S. Constitution and the Florida Constitution, and every citizen may voluntarily waive those rights. If an accused murderer is permitted to waive his constitutional rights such as the right to a trial by jury, why should a mother who has lost her child due to medical malpractice be prohibited from waiving her constitutional right to a lower attorney fee? In most instances, an injured victim will not be able to hire an attorney (certainly not a qualified attorney) with the limits imposed by Amendment 3. The only way most people will be able to hire a qualified attorney and to have their day in court is to waive the right granted by Amendment 3. This petition is simply a back-door attempt to prohibit deserving victims from obtaining legal representation. It is yet another in a long line of efforts to obtain immunity for negligent doctors.

Conclusion

This petition is dangerous and irresponsible. If the proposed amendment to the Rules is passed, it will be a tremendous setback for the people of Florida and it will essentially eliminate any meaningful legal accountability

by the medical profession. It is exactly this accountability that increases the safety of patients. The FMA has conveniently ignored the facts in aggressively pushing its agenda, and such conduct should not be rewarded.

Respectfully submitted,

ERIC ROMANO
Florida Bar No. 120091

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. regular mail this 28th 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.

ERIC ROMANO
Romano, Eriksen & Cronin
P.O. Box 21349
West Palm Beach, FL 33416
Telephone: (561) 533-6700
Facsimile: (561) 533-1285
eric@rec-law.com

By:

ERIC ROMANO
Florida Bar No. 120091