

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 TODD ROMANO

After reading the petition filed by Former Justice Grimes and supported by advocates of the Florida Medical Association and its allies, I write to express my concern over this attempt to amend Rule 1.15(f)(4)(B) of the Florida Rules of Professional Conduct.

First, this petition is premature. The petitioners seek to have this Court address the constitutionality of Amendment 3 through a proposed amendment to the Florida Rules of Professional Conduct rather than through the litigation process. Such a misguided attempt improperly seeks to have this Court act in a legislative capacity. The implementation and application of Amendment 3 should first be tested through the litigation process before amending the Rules of Professional Conduct is even considered.

Next, the petitioners seek only to advance the special interests of their clients through their attempted

modification of the Rules of Professional Conduct. Rather than petitioning for a measure designed to advance the principles of duty and service to the public by the legal profession, those advocating on behalf of the FMA and its allies seek to serve only the interests of their clients. Petitioners seek to advance the interests of their clients to the detriment of the unfortunate citizens of Florida who may be victims of medical malpractice.

PUBLIC POLICY CONSIDERATIONS

Through this petition, the FMA and its allies are once again disguising their real agenda - "tort reform" - by advocating that their proposed rule change favors victims of medical malpractice. In actuality, the sole purpose of this petition is to limit the ability of victims of medical malpractice to seek redress of their claims through the courts. The petitioners and their clients know in their collective hearts that, should their petition be successful, victims of medical malpractice will not have triumphed at all. To the contrary, the FMA, the insurance industry, and those who may commit medical negligence will be the only victors if this petition is granted.

Finally, though not limited just to victims of medical malpractice, the citizens of Florida maintain the rights under the existing Florida Bar rules to contract with a

lawyer of his or her choice and to waive the existing provisions of Rule 4-1.5. The freedom each individual citizen has to contract for legal services with the lawyer of his or her choosing must remain inviolate. After all, an accused murderer may waive his or her right to trial by jury, to representation by counsel, and to maintaining his or her silence when being questioned about the crime for which he or she has been charged. Why should the parents of a child who has been catastrophically injured at the hands of a medical professional be prohibited from waiving their constitutional rights to freely contract with and compensate their lawyer whom they ask to handle their medical malpractice case on a contingent fee basis? The petitioners would answer this question by telling the *parents* that they want them to receive a larger percentage of the recovery when they bring a claim against the medical professional. The petitioners would tell the *lawyer* that they want more money to go to the parents, and less to their lawyer. The petitioners would then tell their *clients* and their clients' allies that they really do not have an answer; only that they want to prevent victims of medical malpractice from accessing the courts, from exercising their constitutional rights, and from being able

to hold the petitioners' clients and allies accountable for medical mistakes.

For the reasons set forth above, I respectfully request that the petition be denied.

Respectfully submitted,

TODD ROMANO
Florida Bar No. 178100

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.

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