

SUPREME COURT OF FLORIDA
Case No. SC05-1150

In Re: Petition to Amend Rule
Rule 4-1.5(f)(4)(B) of the Rules of
Professional Conduct

RESPONSE OF LARRY S. STEWART, ESQUIRE
IN OPPOSITION TO PETITION

LARRY S. STEWART, ESQUIRE, responds in opposition to the Petition as follows:

1. I have handled medical malpractice cases in Florida for in excess of 40 years. My firm has handled medical malpractice cases since its founding in 1984.

2. I file this response to join in the many responses and comments that have made the basic points that (a) the petition is an improper use of Rule 1-12.1(f) of the Rules Regulating The Florida Bar, (b) is based on the wrongful interpretation that Amendment 3 limits attorney fees, and (c) the proposed amendments to Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct would be an impermissible infringement on the rights of citizens to freely contract for lawyers of their choice, including the right to waive constitutional “rights” when they so choose. Those points have been articulately and forcefully made and I adopt them fully and submit that the petition should be denied.

3. I file this response, however, not to simply adopt those points, but to expand upon the first of those points.

4. The purpose of The Florida Bar is to promote “the principles of duty and service to the public [and] to improve the administration of justice....” Rule 1-2, Rules Regulating The Florida Bar. Duty and service to the public necessarily implicates access to justice and the right to counsel of one’s choice. Improving the administration of justice requires action to ensure that

the law and the courts are open and available so that every citizen is rendered his or her due. The so-called “Grimes petition” is inimical to those purposes. Rather than serve the public or improve the administration of justice, it seeks to deny justice to all medical malpractice victims.

5. It is no secret that the enactment of this petition would severely curtail the ability of citizens to obtain counsel for medical malpractice claims. It is apparently not enough for petitioners and their clients that medical malpractice is the most difficult litigation. They seek additionally to prevent cases from even being brought by restricting attorney fees to an unfeasible amount.

6. In making this petition, the “Grimes” petitioners subvert the Rules. This is not the petition of 50 members of The Florida Bar. It is instead the thinly disguised petition of the Florida Medical Association (FMA). The FMA through its affiliate, Citizens for A Fair Share, was the promoter of Amendment 3. Mr. Grimes is counsel for the FMA and news reports have stated that Mr. Grimes freely acknowledged that this petition was filed on behalf of the FMA. The vast majority of the petitioners are medical malpractice tort “reform” advocates: 19 lawyers are from Holland & Knight LLP, the lawyers for the FMA, three are employees of the FMA, 21 are current or former registered lobbyists for tort “reform” principals, four are employees of FPIC, Florida’s largest medical malpractice insurer and 11 are members of Pennington, Moore, Wilkinson, Bell& Dunbar, P.A., the registered lobbyist for FPIC. This is not the action of 50 independent members of The Florida Bar.

7. Voters were misled by the proponents of Amendment 3. They were never informed that Amendment 3 would impair their right to obtain a lawyer of their choice. Now, petitioners, acting as surrogates for their clients, seek to involve this Court in the furtherance of the FMA scheme to eliminate access to justice for medical malpractice victims, for, if this

proposed rule were enacted, medical malpractice victims will find themselves in the worst of positions – unable to find a lawyer and unable to make any recovery at all.

8. This court should not allow the Rules to be hijacked for ulterior purposes by lawyers who are acting as surrogates for clients who cannot file this petition in their own right. Nor should this Court approve a petition that flies in the face of the basic tenets of the Florida Bar, that would prevent the public from having access to justice rather than serving and providing counsel to the public

WHEREFORE, LARRY S. STEWART, ESQUIRE, respectfully requests that this Honorable Court deny the Petition.

I HEREBY CERTIFY that the original, as well as eight copies, were furnished by Federal Express to the Clerk of The Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399-1927 and was electronically filed (e-file@flcourts.org), as well as a copy being sent by Federal Express to the Executive Director/General Counsel of The Florida Bar, John F. Harness, Jr., 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Counsel for Petitioner, Stephen H. Grimes, Holland and Knight, LLP, 315 S. Calhoun Street, Suite 600, Tallahassee, Florida 32301, this 29th day of September, 2005.

/s/

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