

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE:
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR
BIANNUAL FILING

CASE NO. SC10-1967

**THE FLORIDA BAR'S MOTION FOR LEAVE TO FILE REPLY AND
REPLY TO COMMENTS OF SWOPE, RODANTE P.A.**

THE FLORIDA BAR (the bar) respectfully requests leave to file a reply to the comments of Swope, Rodante P.A. regarding the bar's petition to amend the Rules Regulating The Florida Bar and states as follows:

1. Swope, Rodante P.A. filed a motion for leave to file comments past due date on November 30, 2010.
2. The bar has no objection to this Court's accepting the late comments on the pending amendments to the Rules Regulating The Florida Bar.
2. The comments of Swope, Rodante P.A. relate to the bar's proposed amendments creating new subdivision (f)(4)(E) to rule 4-1.5 and related commentary. These amendments address subrogation and lien resolution services in the context of a fee agreement for personal injury matters.

4. The Bar has extensively reviewed this matter and is not in agreement with the position of Swope, Rodante, P.A. The issue of lien and subrogation claim resolution services has been thoroughly considered by the Board of Governors and the Special Committee on Medical Lien Resolution appointed by President Diner and President-elect Mayanne Downs. At numerous times during this lengthy process, opportunity to participate was available and many lawyers and at least one lienholder participated. However, Swope, Rodante, P.A. did not participate. However, despite Swope Rodante's lack of participation, many of Swope, Rodante's concerns were considered during the process. The final proposed amendment is the product of an extensive review of the issue and careful consideration. The proposed rule is in the best interest of the public and provides guidance to lawyers concerning the need to clearly address in their contracts with clients the issue of defining their scope of representation as it relates to the provision of lien resolution services.

Critical to the Bar's review of this issue is the fact that the resolution of liens and subrogation claims has grown increasingly complex due to the various types of liens and subrogation claims, various statutory and contractual requirements relative to lien and subrogation claims, the impact of obscure laws outside of Florida on a lienholder's right to recover, potential for courts and administrative bodies outside

of Florida having sole jurisdiction over the repayment of liens and subrogation claims, increased cost of health care causing liens and subrogation claims to encumber larger portions of lawsuit recoveries, and intensified recovery efforts by lienholders. These factors have lead to law firms and collections companies that concentrate in the collection of liens and subrogation claims and diminished success in reducing or limiting the payment of liens and subrogation claims through standard negotiation. It was determined that injured parties may greatly benefit from being able to hire others with specific experience concerning the resolution of liens and subrogation claims, as practitioners who are experienced in this area may be able to obtain a greater reduction in the lien and therefore allow injured parties to retain more of the money from their cases, and injured parties should not be prohibited from being able to hire, and pay for, these services.

Consideration was given to the fact that the primary role of an attorney representing an injured party in a personal injury matter is the pursuit of damages against a liable party. Consideration was also given to the usual practice of personal injury attorneys of limiting their scope of representation in their contract with the client to the task of pursuing recovery of damages against a third party and not provide ancillary services such as estate planning, probate, guardianship, bankruptcy, financial planning, public benefit planning, tax planning, real estate

transactions, and medicare set-asides. While these ancillary services may not have been needed if a claim for personal injury was not pursued, the provision of these services by those with this specific experience often greatly benefit the injured. Likewise, provision of lien resolution services by those with knowledge and experience can greatly benefit the injured and injured parties should be able to receive such benefit.

In drafting the proposed rule, importance was placed on insuring that clients are clearly advised in the contract of the exact scope of the attorney's representation relative to the resolution of liens and subrogation claims. The provisions of the proposed rule do not allow attorneys to divest themselves from the proper identification of lien and subrogation claims and attempts to negotiate the repayment of the lien or subrogation claim, but do provide that a client may after giving informed written consent hire an experienced practitioner to handle the resolution of the lien or subrogation claim. This provides at the initial point of retaining counsel, the opportunity for the client to know the extent of his attorney's responsibility relative to lien and subrogation claims and provides the opportunity to the client to hire others with specific experience to handle the resolution of liens and subrogation claims. This will prevent future conflicts between the client and the attorney and provide injured parties the opportunity to maximize the benefit of a

lawsuit recovery by being able to hire others with specific experience to resolve the lien or subrogation claim. This is in the best interest of the public.

While the Bar through the lengthy process of considering and drafting the proposed rule has considered Swope, Rodante's concerns, it must be noted that Swope, Rodante's assertion that "{a}lmost without exception, extraordinary lien or subrogation resolution services will be necessary only in personal injury cases where the damages recovered are also extraordinary large" is not factual. The existence of large liens and subrogation claims that require extraordinary services does not necessarily correlate to large lawsuit recoveries, because the size of a lawsuit recovery is often controlled by the liability of the parties, the tortfeasor's funds available to satisfy any potential judgment, and other considerations. From the input received during this process, it was evident that large liens and subrogation claims that require extraordinary lien and subrogation resolution services are often involved in cases where the lien or subrogation claim encumbers a large portion of the lawsuit recovery-therefore, meriting the need for separate lien and subrogation services. The bar has considered Swope, Rodante's concerns through the process of reviewing the issue and drafting the proposed rule and is not in agreement with their comments. The bar believes strongly that the proposed rule is in the best interest of the public.

WHEREFORE, the bar respectfully requests that this court accept the bar's response to the comments filed untimely by Swope, Rodante P.A. and approve the proposed amendments to rule 4-1.5, Rules Regulating The Florida Bar, as proposed by the bar in its petition.

Respectfully submitted,

John F. Harkness, Jr.
Executive Director
The Florida Bar
Florida Bar Number 123390

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Leave to File Reply and Reply of The Florida Bar has been sent by United States mail to the following individuals on this 11th day of January, 2011.

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CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this Reply is typed in 14 point Times New Roman Regular type.

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