

August 4, 2005

Clerk, The Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

RE: Grimes Petition to Amend Rule 4-1.5(f)(4)(B) to Limit
Medical Malpractice Victims' Access to Courts
Filing SC05-1150

Dear Clerk:

I write with regard to the Petition filed by Stephen Grimes and 54 others to amend 4-1.5(f)(4)(B) of the Rules Regulating the Florida Bar proposing to incorporate into those Rules certain restrictions on fees that the proponents suggest are required by the passage of Amendment 3 this past November.

At the outset I want you and all the recipients of this letter to know that the lawyers in this office occasionally handle plaintiffs' medical malpractice matters. It is a very, very small part of our practice, but it is an area of law with which we are familiar.

Let's not beat around the bush about this proposal. The amendment in November passed. That Amendment said absolutely nothing about attorneys' fees or access to the Courts. It merely appears to grant a right to a claimant to keep a certain portion of any malpractice settlement or award. The phrasing by proponents was not unintentional.

As all recent studies have made clear, medical malpractice causes thousands and thousands of deaths annually in this country, and countless thousands more are injured by medical malpractice. If this proposal is adopted, the result will be to ensure that victims of medical malpractice will not be able to hire a lawyer at all, much less retain a certain percentage of a then mythical recovery. If incorporated as a Bar Rule, it will mean that no victim of medical malpractice will be able to get a lawyer at all. Malpractice cases are expensive and difficult. It costs tens and sometimes hundreds of thousands of dollars to handle them. No lawyer will take a case on a contingency under the restrictive arrangements proposed by the Petition.

In short, the intent of the proposal is not to ensure that claimants receive more of the money they are awarded; it is to ensure that none of the Florida citizens injured and killed by medical malpractice in this state can ever make a claim because they cannot get a lawyer to represent them. This is a simple and undeniable fact.

The language of the Amendment does not require or warrant a Bar rule addressed to attorneys' fees. And certainly, as The Florida Bar found when it took up this matter, interpretation of Amendment 3 is a substantive legal matter to be addressed through appropriate litigation in the courts of this state. Such litigation would ordinarily come before this Court only in the context of litigation over the meaning of this provision, and not without context, as the Petition would require. The Court ought not preempt a time-tested process designed to present only ripe and justiciable controversies to the Court by adopting a Rule over such substantive rights as are implicated by this Amendment. These rights include both state and federal constitutional rights concerning freedom of contract, access to the courts, and the doctrines of waiver that citizens have in exercising those rights. In short, it would be my request that the Court deny this petition or dismiss it.

Respectfully submitted,

Michael S. Olin

MSO/ig

cc: John Harkness, General Counsel
The Florida Bar
Stephen H. Grimes, Counsel for Petitioner