

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

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Members of the Supreme Court of Florida,

Please accept this as my comments on the Petition filed by Stephen H. Grimes relative to the attempt to change the Florida Bar Disciplinary Rules to engraft Mr. Grimes' interpretation of Amendment 3 on to those Rules.

There are a number of problems with making the suggested change. As I am sure the Court is aware, there is currently pending, or will be pending shortly, litigation as to the interpretation and application of Amendment 3. There is a substantial argument that Amendment 3, by limiting the attorney's fees of one side while leaving the attorney's fees of the other side untouched, violates the Federal Constitution. In addition, there is a substantial question as to the application of Amendment 3 as it is written. At least one reasonable interpretation of its language suggests that it does not apply to a limitation on attorney's fees at all.

For ethical rules to be changed, adopting one side or the other of what will be litigated issues, is inappropriate. The forum for the amendment of the disciplinary rules does not allow the complete examination of the issues which

would be addressed in contested litigation. Truncating such litigation by the premature adoption of a disciplinary rule itself puts into question whether due process of law would be provided.

The issue of the client's right to waive constitutional provisions is not unique. Every day in the criminal courts of our State, defendants waive their constitutional rights and plead guilty to various offenses. Waiver of a constitutional right is clearly a personal right and to hold otherwise would implicate questions of right to contract that go beyond the scope of the Federal constitutional issues which surround the adoption of Amendment 3. No Court has yet been briefed on these issues. Indeed, there is no record establishing the factual issues that would be the underpinning of such briefs. By asking this Court to amend the rules of discipline, the proponent is ignoring these contested issues and asking the Court to leap frog over the facts and the law by adopting this provision.

In addition to all of that, the existing provisions of Rule 4-1.5 allow for waiver of current Court imposed limitations on fees. Those provisions permit trial courts to waive the existing limitations in appropriate cases. Nothing has been shown as to why that provision should be changed.

The Court, in dealing with this issue, has been asked to consider matters which affect substantial substantive rights of Florida citizens. This amendment to

the disciplinary rules seeks to accomplish that in haste. That is the last thing this Court should entertain.

IT IS HEREBY CERTIFIED that a true copy of the foregoing has been furnished, by mail, this 20th day of July, 2005, to: JOHN HARKNESS, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; and STEPHEN H. GRIMES, Counsel for Petitioner, Holland and Knight, LLP, P. O. Box 810, Tallahassee, FL 32302-0810.

Respectfully submitted,

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By /s/ \_\_\_\_\_  
THEODORE BABBITT  
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