

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

**COMMENTS OF VIRGINIA M. BUCHANAN, ATTORNEY,
FLORIDA BAR NO. 793116 AND OBJECTIONS TO
PROPOSED AMENDMENT**

Virginia M. Buchanan respectfully submits the following comments and objections to the proposed Amendment to the Rules Regulating the Florida Bar – Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct, as follows:

1. As a member of the Florida Bar and a practicing attorney, I file this pleading to voice my opposition to the Grimes' Petition.
2. I believe the Constitutional Amendment itself is improper for a variety of reasons. It purports to allow the taking of property without just compensation, it denies access to courts, it treats victims of medical negligence differently than victims of other torts and results in a denial of due process. It also attempts to take away the right to contract.
3. It would seem appropriate to defer any rule-changing until after such time as the soundness of the Constitutional Amendment is considered by this Court.

4. Setting aside the issue of whether the Amendment is proper and consistent with the other provisions of the Florida and Federal Constitutions, the requested change to Rule 4-1.5 goes beyond what the Amendment provides, and it attempts to restrain the ability of clients and lawyers to forge agreements. The ability of a client to contract with an attorney regarding representation is one of the most important in our system of justice. We are compromising the very principles that set our society apart from others when we attempt to remove basic and fundamental freedoms.

5. I am certain that there will be very powerful and persuasive language presented in comments and arguments on both sides of this issue. However, the simple truth is that citizens have long had a difficult time getting counsel to handle medical negligence claims; the passage of the Amendment and the proposed changes to Rule 4-1.5 virtually guarantee that few will be able to obtain counsel. Medical negligence law is a highly regulated, specialized area of practice, some would describe as a veritable minefield, a land of hidden traps.

6. Simple math readily demonstrates why the Amendment and the proposed rule changes will preclude competent lawyers from accepting these complex, time and cost intensive cases.

7. The proposed changes are a poorly disguised tactic to deprive citizens of the freedom to contract, to make medical negligence cases unaffordable to law firms and clients alike. The proposed rule is far-reaching and does not recognize the need for exceptions, waivers, variations, combination contracts, etc. Our existing rules preclude excessive fees, and there are mechanisms in place to evaluate any outcome and fee assessment in any given case.

8. If we had an individual or a panel with the wisdom of Solomon, where justice would be assured in cases of medical negligence, there would perhaps be no need for lawyers to be involved at all. Sadly, we do not have such a system, and the implementation of the proposed rule changes will take us to the opposite extreme, where justice is virtually certain to be thwarted.

9. I ask this Most Honorable Court to preserve the important and fundamental rights of access to courts, freedom of contract and the ability to make independent and free choices in matters of legal representation.

10. Therefore, I oppose the Petition and request that this Honorable Court deny the Petition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to John Harkness, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 and Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810, by regular U.S. mail, on this _____ day of August, 2005.

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