

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 CINDY G. DUQUE
TO PROPOSED AMENDMENT**

Please consider the following comments and my objections to the Petition to Amend Rule 4-1.5(f)(4)(B) of the Rules Regulating the Florida.

The Grimes Petition is essentially asking this Court to create a Florida Bar Rule limiting the contractual right of lawyers and their clients. In the legal profession, just as in any other profession, lawyers and clients should be at liberty to engage in voluntary contracts for legal services. It is a violation of the freedom to contract to take away this liberty from our profession. Furthermore, this limitation applies only to some lawyers and would not affect those lawyers who charge an hourly fee for their services. There are no limitations placed on what a lawyer may charge for his/her hourly fee.

Many constitutional rights can be waived by our citizens. The Grimes Petition is an attempt to block citizens of Florida from voluntarily waiving that right. The right of access to courts itself in Section 21 of the Florida Constitution can be waived by an arbitration clause in a contract. If such a fundamental right as the access to courts can be

voluntarily waived by our citizens, they certainly should have the power to waive a constitutional provision limiting their own freedom to contract with a lawyer of their choice. The waiver issue must be tested through the Florida Courts in a true controversy as with all important legal precedent. To prevent waiver of Section 23 now by the passage of the proposed amendment to the Florida Bar Rules is the equivalent of a judicial determination of the right to waive a constitutional provision without the benefit of due process.

Amendment 3 is unconstitutional as it violates the rights of malpractice victims to due process, freedom of association, equal protection, and access to the Courts in Florida. An individual's rights under the Current Florida Bar rule to contract with a lawyer, a rule which this Court has previously found to be presumptively reasonable, should not be changed.

The proposed amendment to the Rules is in no way intended to promote the standards of professionalism in the practice of law, as should be the purpose of any Rule, but instead is filed on behalf of an undisclosed client (The Florida Medical Association) in an effort to gain a litigation advantage in the Florida courts. The clear and obvious reason for this proposed amendment to the Rules Regulating the Florida Bar is to make it more difficult for victims of medical malpractice to find representation. This is an inappropriate and underhanded attempt to change substantive law through rules regulating professional conduct and should not be permitted by this Court.

Accordingly, I respectfully request that this Court deny the Petition to Amend Rule

4-1.5(f)(4)(B) unless and until the validity of a citizen's right to waive Section 23 has withstood the test of judicial scrutiny respecting the due process rights of all our citizens.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Executive Director of the Florida Bar, John F. Harkness, Jr., 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida 32302, **this 26th day of September, 2005.**

/s/ Cindy G. Duque
Cindy G. Duque, Esq.