

SUPREME COURT OF FLORIDA
CASE NO.: SC05-1150

In Re: Petition to Amend Rules
Regulating The Florida Bar -
Rule 4-1.5(f)(4)(B) of the Rules
Of Professional Conduct.

COMMENTS OF C. RYAN ESLINGER,
FLORIDA BAR NUMBER 0634859,
AND OBJECTIONS TO PROPOSED AMENDMENT

COMES NOW, C. Ryan Eslinger, Florida Bar Number 0634859, and 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.

1. The petition seeking to amend Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct (hereinafter “Grimes petition”) in response to the recent creation of Article 1, Section 26 (“Claimant’s right to fair compensation” hereinafter “Amendment 3”) of the Florida Constitution, attempts to circumvent the traditional notions of separation of powers by attempting to change substantive law through the judiciary and the rules regulating professional conduct.

A. “If not limited in the Constitution, the great weight of authority in this country supports the view that courts have inherent power to make rules governing contempt, admissions to the bar, and for the conduct of the business brought before them. They have no power to affect substantive law or jurisdiction.” Petition of Florida State Bar Ass’n for Promulgation of New Florida Rules of Civil Procedure, 199 So. 57 (Fla. 1940).

B. Of key importance in the State of Florida democratic system of governance is the separation of powers. The people, through the elected officials of the Legislature, make substantive law. Sometimes, the people themselves make substantive law through the enactment of constitutional amendments, such as Amendment 3. However, as discussed in number 2, *infra*, Amendment 3 does not speak to a cap on attorney’s fees. The judiciary, through this Honorable Court, should not enact a substantive law provision through the Rules Regulating the Florida Bar. The Grimes petition is such a provision.

2. The Grimes petition incorrectly analogizes Amendment 3 approved by the voters to a limit on attorney contingency fees.

A. Amendment 3 does not prevent any limit on attorney contingency fees. Instead, Amendment 3 guarantees an amount of recovery in a medical malpractice action. (Seventy percent (70%) of the first \$250,000 and ninety percent (90%) of any amount greater than \$250,000). To enact a Rule of the Florida Bar that would limit attorney contingency fees on the basis of that Amendment would give credence to this incorrect correlation of the Grimes petition to Amendment 3.

3. The present system of determining reasonable contingency fees is adequate.

A. One reason for declining to adopt a proposed rule is the adequacy of the current system. The Florida Bar Re: Amendments to Rules Regulating The Florida Bar, 697 So.2d 115 (Fla. 1997)(rejecting proposed rule 3-5.1 because the current system was adequate). Rule 4-1.5(a) currently prohibits a clearly excessive fee or cost. Rule 41.5(f) regulates contingent fees and determines what fees would be clearly excessive, without prior court approval.

B. Because the current system of determining an excessive fee is adequate, the current proposed rule should be rejected.

4. For the reasons above, I oppose the Grimes petition, and I respectfully request that this Honorable Court deny it.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and nine (9) copies of the foregoing was forwarded to the Clerk of the Supreme Court of Florida for filing, along with a copy served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee FL 32399-2300, and Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, L.L.P., P.O. Box 810, Tallahassee, FL 32302-0810 on this the 27th day of September, 2005.

C. RYAN ESLINGER