IN THE 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 MICHAEL B. FEILER, FLA. BAR NO 098477,
AND OBJECTIONS TO PROPOSED AMENDMENT

The undersigned, Michael B. Feiler, and attorney licensed to practice in Florida, respectfully submits the following comments and objections related to the proposed amendment to Rule 4-1.5(f)(4)(b), Rules Regulating the Florida Bar ("the Grimes petition"), and states:

As a member of the Florida Bar and a practicing attorney, I am filing this pleading to voice my objection to the Grimes petition, which is a thinly veiled effort by the Florida Medical Association ("FMA") to encroach upon the rights of victims of medical negligence so as to gain an unfair litigation advantage, and to silence the voices of such victims that want to be heard.

To begin with, the petition is a brazen attempt to misuse a procedural privilege granted to members of The Florida Bar to seek rule changes concerning matters of professional regulation and ethics in order to effect an unwarranted. substantive change in the law. The lawyers who signed as so-called Petitioners in this matter are in reality advocates for the FMA (Petitioners' undisclosed client) and its political allies. Further, the application and interpretation of Amendment 3 raises substantial legal questions yet to be litigated in the courts of this state. Any consideration of change a the rule should await the outcome of such litigation.

Additionally, the rule change proposed by the Grimes petition is premised on the assumption that Amendment 3

limits the fees, and only the fees, that attorneys representing successful medical malpractice plaintiffs can recover on a contingency basis. That disputed proposition remains to be litigated in the courts of Florida, so a rule approved by the Florida Supreme Court that seems

to recognize the validity of that undecided underlying proposition could he misconstrued as authority for the proposition itself, thereby prejudicing the parties to the litigation in which the effects of Amendment 3 are to be decided. Indeed, even if the Amendment is so interpreted, there are numerous serious constitutional challenges likely to be raised against enforcing Amendment 3asacap on contingency fees, including impairment of clients' rights to due process; freedom of association;

equal protection; access to courts; and violations of the Supremacy Clause. Those challenges will require extensive litigation and appellate review that likely cannot be completed until long after consideration of this proposed amendment. It would be unwise for The Bar to approve, and for the Florida Supreme Court to adopt, a Rule Regulating The Florida Bar that is hinged exclusively upon such unsettled questions of law. Similarly, a rule that prevents judicial approval of departure fees if adopted, would amount to an inappropriate advisory opinion prematurely issued to the courts and lawyers of this State impliedly answering those unresolved constitutional questions.

The Grimes petition also ignores a very basic right under both the Florida and federal constitutions: the right of citizens to knowingly waive one constitutional right, in order to more

fully exercise another such right more valuable to the holder of both those rights. There is simply no logical basis for the argument that Amendment 3 (assuming its validity) should be treated differently than any other state or federal constitutional right. For example, we know that defendants in criminal cases can waive a whole host of rights, even with their life and liberty in the balance. There is simply nothing in the language of the Amendment that suggests that citizens have no right to knowingly and intelligently waive the right.

In sum, victims of medical negligence in Florida should not have their fundamental right to retain the counsel of their choice stripped from them. Accordingly, I respectfully urge the Court to DENY the Grimes petition.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing has been served by mail on: John F. Harkness, Jr., Esq., 651 E. Jefferson St., Tallahassee, FL 32399-2300; and Stephen H. Grimes, Esq., P.O. Drawer 810, Tallahassee, FL 32302, on September 13, 2005.

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By:_____
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