

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 MARC A. GREGG, ATTORNEY
FLORIDA BAR NUMBER 8648**

IN OPPOSITION TO PROPOSED AMENDMENT

Please accept for consideration my comments on the Petition to Amend Rule 4-1.5(f)(4)(B).

1. As a member of the Florida Bar since 1994, I file this pleading to voice my opposition to the “Grimes Petition”.
2. I am opposed to the Grimes Petition for many of the same reasons expressed in the Palm Beach County Bar Association’s resolution in opposition to

amendment of the Rules Regulating The Florida Bar proposed in the Grimes Petition.

3. The Grimes Petition is an attempt to interfere with the attorney-client relationship as it currently exists under Florida law and under the Rules Regulating the Florida Bar. At a minimum, it represents a misunderstanding of the application of the recent Ballot Amendment 3, now Article I, Section 23 of the Florida Constitution. The application of the Amendment is a matter of interpretation that should be decided through litigation in the courts, rather than by premature amendment of the Rules Regulating the Florida Bar. The Amendment itself may be unconstitutional, at both the state and federal levels, and its constitutionality should be decided in the courts, through litigation, before any substantive changes regarding it are implemented as Bar rules.
4. The substantive effect of the Grimes Petition would be to impair access to the courts for the victims of medical malpractice, which is counter to public policy and violative of the Florida Constitution's provisions regarding equal access to the courts.
5. Further, the right of an individual to contract with a lawyer of his or her choice and to waive the existing provisions of Rule 41.5 should not be

changed. To do so would implicate claimants' rights under both the state and federal constitutions.

6. Finally, the interpretation of Amendment 3 and its applications is a substantive legal matter which must be addressed by the courts of this state. The Grimes Petition is an impermissible attempt by special interests to effect an "end run" around due legal process, and to change substantive law through the rules regulating professional conduct.

CONCLUSION

WHEREFORE, the undersigned respectfully submits that this Court should reject the proposed amendment to Rule 4-1.5.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished by U.S. mail upon John F. Harkness, Jr., Executive Director of the Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida 32302, and was also furnished via e-mail to e-file@flcourts.org on this 22nd day of September, 2005.

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