

IN THE SUPREME COURT OF
THE STATE 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 AND OBJECTIONS OF FREDERICK A. GUNION, JR.,
ATTORNEY, FLORIDA BAR NO. 173692, TO PROPOSED AMENDMENT**

COMES NOW, FREDERICK A. GUNION, JR., and he hereby submits the following comments and objections to the Proposed Amendment to the Rules regulating the Florida Bar, particularly Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct, and he states:

1. As a member in good standing with the Florida Bar, I hereby file this pleading to voice my opposition to the Petition of Stephen H. Grimes.
2. Any interpretation and/or application of Amendment 3 is of a substantive nature and a legal matter to be addressed through litigation in the appropriate court of this state.
3. Mr. Grimes' petition attempts to substantially change substantive law through rules regulating attorneys' professional conduct and, in my opinion, this approach and such changes are inappropriate, and not in keeping with the standards as set forth and

followed in the State of Florida for many years.

4. The current Florida Bar rule concerning the right of individuals to contract with an attorney of his or her choice and to waive existing provisions of Rule 4-1.5, should not be changed. To do so would be to interfere with an individual's right to contract for legal services with a lawyer of his or her choice.

5. It is fundamental to the American Justice System and, in this case, more particularly the Civil Justice System, that individual citizens have the right to contract for legal services with a lawyer of his or her choice and that said right remain inviolate. Changes of the nature outlined in Stephen Grimes' proposed petition would, by definition, dramatically affect these individual rights which have been enjoyed pursuant to the United States Constitution, the Florida Constitution and common law, since the founding of this country.

6. Amendment 3, as passed, purports to affect a medical malpractice lawsuit claimant's right to receive certain damages and does not, by its express terms, place any limitation on attorney's fees.

7. In my opinion, this petition by Mr. Grimes is an effort on behalf of the Florida Medical Association and other medical care providers and their insurers and other special interest groups, to "do through the back door what they could not do through the front door." In other words, their own proposed amendment to the Constitution (Amendment 3) did not specifically address attorney's fees and since they now have decided that that amendment was not properly worded, they are trying to effectuate a change in an amendment to the Constitution without having the voters make such change.

8. Amendment 3, as passed, is unconstitutional, on its face, in my opinion, as it obviously violates the rights of medical malpractice victims to due process, access to the courts, equal protection and freedom of association, among other reasons. Additionally, a rule change, such as the one Mr. Grimes' petition suggests, would prevent individuals from waiving Constitutional Rights which they have the absolute right to do. For instance: Once properly Mirandized by a police officer, an individual under investigation for a crime can waive his right to have an attorney present when, in fact, things he may say without the advice of an attorney could wind up costing him his freedom. If this type of right can be waived, then most assuredly an individual should be allowed to waive his right to certain amounts of damages in civil cases, as the individual sees fit.

THEREFORE, I oppose the Petition and request that the Court deny this petition.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon 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, L.L.P., P.O. Box 810,
Tallahassee, Florida 32302-0810, on this _____ day of July, 2005.

FREDERICK A. GUNION, JR., P.A.
9350 South Dixie Highway
Suite 1200
Miami, Florida 33156
(305) 670-7080
1-800-809-0000
(305) 670-6666

By: _____
FREDERICK A. GUNION, JR.

I HEREBY CERTIFY that the Original and Eight (8) copies of the signed
original pleading were served by Federal Express to: CLERK, THE FLORIDA SUPREME
COURT, 500 South Duval Street, Tallahassee, Florida 32399-1927

FREDERICK A. GUNION, JR., P.A.
9350 South Dixie Highway
Suite 1200
Miami, Florida 33156
(305) 670-7080
1-800-809-0000
(305) 670-6666

By: _____
FREDERICK A. GUNION, JR.

word document attachment to E-file@flcourts.org

Subject: Filing in "SC05-1150"