

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 JAMES W. GUSTAFSON, JR., ATTORNEY,
FLORIDA BAR NO. 0008664 AND OBJECTIONS TO
PROPOSED AMENDMENT**

James W. Gustafson, Jr. 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. As a member of the Florida Bar and a practicing attorney, I file this pleading to voice my opposition to the Grimes Petition.
2. The Grimes Petition is an abuse of a procedural privilege extended to each of us as members of The Florida Bar to seek changes in the rules regulating our profession to advance our profession and our professionalism. The Grimes Petition is not intended to advance our practice or benefit jurisprudence. Instead, the Petition is filed on behalf of an undisclosed client (The Florida Medical Association) in an effort to gain a litigation advantage as to the constitutionality of Amendment 3.
3. Having never before lobbied on behalf of the victims of medical negligence in its history, the Florida Medical Association is not, through its lawyers and the Grimes Petition, seeking to advance the interests of medical negligence victims now.

4. Rather than an effort to improve our Bar through rule change, the Petitioners and their shadow client (the Florida Medical Association) seek to graft Amendment 3 into a Bar rule change and thereby avoid a test of the Amendment's underlying legality under our State and Federal Constitutions.
5. Amendment 3 is unconstitutional, as it violates malpractice victims' rights to due process, freedom of association, equal protection, and access to courts. Moreover, a rule change of this nature would prevent a malpractice victim's right to waive one constitutional right (assuming for argument's sake the Amendment was constitutional) in favor of another potentially conflicting right. The constitutionality of Amendment 3 should be addressed by our judiciary and not side-stepped by the Grimes Petition in its disingenuous effort to alter our professional rules of conduct.
6. The agenda behind the Grimes Petition is to rob certain economically disadvantaged segments of our society of accessibility to effective legal representation and, specifically, to impair and effectively deprive medical malpractice victims' right of access to the judicial system.
7. Therefore, I oppose the Petition and request that this Honorable Court deny the Petition.

CERTIFICATE OF SERVICE

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 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 22nd day of July, 2005.

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