

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 DAVID R. HEIL IN OPPOSITION TO PROPOSED AMENDMENT

I, David R. Heil, Esquire 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 personal injury attorney, I file this response to the Grimes petition to voice my opposition to the Grimes' Petition.

2. Amendment 3 has forced me to drop Medical Malpractice cases from my practice. The draconian fee reductions contained within Amendment 3 worked their intended purpose in driving me out of the field of practice of medical malpractice and thereby limiting citizen's ability to recover for their injuries. To prevent waivers would certainly drive the majority if not all attorneys out of the medical malpractice field and the citizens of this state would be left without

remedy.

3. Prior to Amendment 3, it was not immoral or unethical to charge more than the amount reflected in Rule 4-1.5 of the Rules of Professional Conduct. Nothing material in society has changed in the interim. Although our citizens approved Amendment 3, they did not include language prohibiting a waiver of these rights. In the absence of any such prohibition, Courts have held that parties may waive even more fundamental rights including the right to a trial by trial. As an attorney that represents injured citizens of this state, I see and deal with the inequities of the legal system as it now exists. There is not a fair and level playing ground between an injured person and the insurance companies defending the actions. I believe waivers of important rights must be clear and conspicuous, but there is no doubt that such rights can be waived. The waiver of the rights granted by Amendment 3 is much less compelling than a waiver of a jury trial specifically incorporated into our Bill of Rights for over 200 years.

4. As for ethics, it would seem to me to be unethical to prevent citizens from having their day in court if it was possible for the citizens to have their day in court if they continued to have the option to waive their Amendment 3 rights. The policy favoring access to courts is embedded in our State Constitution and at least the penumbra of our federal Constitution. The Petition suggests a rule that attorneys must stand by while access to justice is denied. However, the oath I took

compels me to do just the opposite, to wit: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."

5. Medical malpractice cases are already very difficult, expensive and only the most meritorious cases with significant damages can be evaluated if one wants to keep his practice open. The Petitioner would raise the bar even higher such that it would deny access to court to only those cases which would shock the conscience. This is not what the citizens intended when they voted for the Amendment.

6. The Rules of Professional Conduct should not be manipulated in favor of one party when the citizens of this State have not taken a position on waiver. The Petition is a disguised attempt to rewrite the ballot amendment after it has been voted upon. If the Petitioners want to change Amendment 3, they should be required to put it to the vote of our great citizens.

7. Therefore, I respectfully 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, LLP, P.O. Box 810, Tallahassee, FL 32302-0810 on this day of ____ August, 2005.

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