

SUPREME COURT OF FLORIDA

CASE NO.: SC05-1150

**In Re: Petition to Amend Rules Regulating
the Florida Bar – Rule 4.1.5(f)(B) of the
Rules of Professional Conduct**

**COMMENTS OF BARRY N. HEISLER, ATTORNEY,
FLORIDA BAR NO.: 0100498 AND OBJECTIONS
TO PROPOSED AMENDMENT**

BARRY N. HEISLER II respectfully submits the following comments and objections to the proposed Amendment to the Rules Regulating the Florida Bar – Rule 4-1.5(f)(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, which seeks to abrogate the rights of the citizens, myself included, of the state of Florida.
2. As a realistic matter, this Petition is being filed on behalf of, and at the insistence of, the Florida Medical Association. This is only being done to gain a litigation advantage as to the constitutionality of Amendment 3 which is already being pursued through the appropriate legal channels.
3. This is an improper attempt to change the Florida Bar rules, which should instead be changed only if determined by the Florida Bar and its members. Instead of pursuing the appropriate method, the Petitioners and the Florida Medical Association seek to introduce Amendment 3 into a Bar rule change and thereby avoid a test of the Amendments underlying legality under state and federal constitutions.

4. Amendment 3 is unconstitutional as it violates the rights of malpractice victims to due process, freedom of association, equal protection, and access to courts. A Rule change of this nature prevents the victim's right to waive a constitutional right (assuming the Amendment was constitutional) in favor of another conflicting right. Amendment 3's constitutionality should be addressed by the judiciary and NOT sidestepped by the Grimes Petition in a disingenuous effort to alter our rules of professional conduct.

5. Speaking as a citizen of the State of Florida, if I was ever a victim of medical malpractice, I would certainly want every possible freedom to contract with the best attorney available and pay them an amount which I, not someone else, considered fair. I oppose the Petition and request that this Honorable Court deny the Petition.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 25th day of July, 2005, by Federal Express to the Clerk, the Florida Supreme Court, 500 S. Duval Street, Tallahassee, FL 32399-1927; also via electronic filing at e-file@flcourts.org and by US Mail to John Harkness, General Counsel, Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300, Stephen H. Grimes, Counsel for Petitioner, Holland & Knight, LLP, PO Box 810 Tallahassee, FL 32302-0810.

Respectfully submitted,

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BY



BARRY N. HEISLER II
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ENVELOPES

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