

**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.

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**OBJECTIONS AND COMMENTS OF WAYNE HOGAN,  
ATTORNEY, FLORIDA BAR NO. 142460, TO PROPOSED  
AMENDMENT TO THE RULES REGULATING THE FLORIDA BAR**

Wayne Hogan, Florida Bar No. 142460, respectfully submits comments and objections to the proposed Amendment to the Rules Regulating The Florida Bar – Rule 4-15(f)(4)(B) of the Rules of Professional Conduct.

WHAT IS YET TO BE EXAMINED MUST NOT BE IMPOSED.  
WHAT WAS HIDDEN MUST NOT BE IMPOSED.

The people had resisted years of siege. Then the attackers shifted strategy. They left an enticing gift, and withdrew. The defenders warned against the gift. But the people, enthralled, embraced the gift and brought it inside the walls. After celebrating, the people slept. Under cover of darkness, the plotters' agent, who had deftly misled the people, opened the hatch and released the hidden forces within. The people were unaware, defenseless. Troy was no more. The people had lost, not to superior forces, but to trickery. Virgil, *The Aeneid*.

Just so, Florida's people had long resisted a siege that sought to deprive them of their right of access to the courts. After many years, the medical lobby

shifted strategy, appeared to withdraw and to offer a gift. It said nothing of capping damages (or even attorney's fees); indeed, it promised compensation. The defenders warned against the gift, but the people, enticed, embraced it. They brought it inside the walls of the Constitution. Only now, while the people sleep (and far from the voting forum), do the strategists reveal their plot to unleash a hidden force, a secret implied clause, that would take from the people a right common to all other personal rights, the right to waive one provision to enhance the enforcement of other constitutional rights.

But it is here - in this Court, and in the judicial system it leads - that the Trojan Horse analogy breaks down. The medical lobby cannot itself prevent malpractice victims from engaging the counsel of their choice, on the terms of their choice. So, Petitioners boldly demand that this Court intercede on their clients' behalf. Yet, the amendment must undergo a comprehensive judicial examination.

The proposal to change the Rules of Professional Conduct is wildly premature. First, the courts must apply judicial scrutiny to the amendment, as written, before even considering whether it carried within it some hidden limitation on a person's right to waive the provision. The courts will analyze it for validity, meaning and applicability (see, e.g., the issues raised in the analyses presented in the objections of William C. Gentry, C. Rufus Pennington, III, Howard C. Coker and Neal A. Roth and the Academy of Florida Trial Lawyers).

Secondly, the courts will determine whether, through a hidden purpose, the amendment can, at once, give and take away a right to compensation. The courts, and ultimately this Court, may decide that the amendment is ineligible to take a place in the Constitution because it failed to disclose, in either the body or the summary, the intent that, unlike all the personal rights of Floridians, it could not be waived by the person holding the right, i.e., it failed to disclose that the person is stuck with the “right”. Or, the courts, and ultimately this Court, may declare that the right (whatever its meaning and applicability) may be waived by the holder.

So, unlike the people of Troy, who were vanquished in a flesh and blood war with no rules, the people of Florida are protected, in what seems like a war, by the rules of a system of jurisprudence that tests new laws for validity, meaning and applicability; a system of jurisprudence that refuses to lend itself to imposing on the people “rights” that have undisclosed consequences with no escape.

It is respectfully submitted that the petition should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and nine (9) copies hereof have been forwarded to the Clerk for filing, along with an electronic copy filed with the Clerk at [e-file@flcourts.org](mailto:e-file@flcourts.org); and that a copy has been furnished by U.S. Mail to John F. Harkness, Jr., General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300, and to Stephen H. Grimes, Counsel for Petitioners, Holland & Knight, LLP, Post Office Drawer 810, Tallahassee, FL 32302-0810, this 28th day of September, 2005.

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