

SUPREME COURT OF FLORIDA

CASE NO.: SC05-1150

IN RE: PETITION TO AMEND
RULE 4-1.5(f)(4)(B) OF THE
RULES OF PROFESSIONAL CONDUCT

RESPONSE TO PETITION BY JOHN McLAUGHLIN, ESQ.

COMES NOW John McLaughlin and files his Opposition and Comment to the proposed Amendment to the Rules Regulating the Florida Bar – Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct. I am opposed to the Petition commonly referred to as the Grimes’ Petition, as follows:

1. As a member of the Florida Bar since 1975 and a board certified civil trial attorney, I file this pleading to voice my opposition to the Grimes’ Petition.

2. This Petition is an abuse of a procedural privilege extended to each member of the Florida Bar to seek changes in the rules which regulate our profession. These rules are meant to advance our profession and our professionalism.

3. 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).

4. In an effort to gain a litigation advantage as to the constitutionality of Amendment 3 to the Florida Constitution, the Petitioners are trying to amend the Rules Regulating the Florida Bar.

5. Rather than an effort to improve our Bar through rule change, a right exclusive to Bar members, the Petitioners 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.

6. Amendment 3 is unconstitutional as it violates the rights of malpractice victims to due process, freedom of association, equal protection, and access to courts.

7. This Court has held that any person may waive their constitutional rights Abell v. Town of Boynton, 117 So.2d 507 (Fla. 1928).

8. The interpretation of Amendment 3 and its application is a substantive legal right that should be addressed through appropriate litigation in the courts of this state. The petition attempts to change substantive law through rules regulating professional conduct and that is inappropriate.

9. Amendment 3 concerns itself with the claimants' right to receive certain damages in medical liability claims and does not place a limitation on

attorneys' fees.

10. Any individual's existing rights under the current Florida Bar rule to contract with a lawyer of his or her choice and to waive the existing provisions of Rule 4-1.5 should not be changed. To do so otherwise limits claimants' rights under both the state and federal constitutions; and

11. For the foregoing reasons, this member of the Florida Bar, opposes the Grimes Petition and requests that this Honorable Supreme Court deny said Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this _____ day of September, 2005 by U.S. mail to the Clerk of the Florida Supreme Court, 500 S. Duval St., Tallahassee, FL 32399-1927 and by US Mail to John Harkness, General Counsel, Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300, Stephen H. Grimes, Counsel for Petitioner, Holland & Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810.

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