

# 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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**COMMENTS OF DIANA SANTA MARIA, ATTORNEY  
FLORIDA BAR NUMBER 473340**

**IN OPPOSITION TO PROPOSED AMENDMENT**

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Please accept for consideration my comments on the Petition to Amend Rule 4-1.5(f)(4)(B).

1. As a member of the Florida Bar since 1985 and a current member of the Florida Supreme Court Judicial Nominating Commission as well as the Supreme Court Commission on Professionalism, I file this pleading to voice my opposition to the “Grimes Petition”.

2. I am opposed to the Grimes Petition which asks this Honorable Court to amend the Rules Regulating The Florida Bar in order to accomplish the aspirational goals set out by a special interest group, namely, corporate healthcare lawyers and lobbyists, representing certain segments of the Florida healthcare industry and seeking to gain advantages in the legal arena for their special interest clients to the detriment of unrepresented Florida citizens who have been or may become the unfortunate victims of medical malpractice.

3. The recent Ballot Amendment 3, now Article I, Section 23 of the Florida Constitution is in conflict with the access to courts provision in Article 1, Section 21 of the Florida Constitution which reads:

**SECTION 21. Access to courts. The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.**

The only way for Sections 23 and 21 of the Florida Constitution to be compatible is to construe Section 23 as creating a right which can be waived by citizens whenever they find it in their own best interests to do so. Other constitutional rights are freely waivable and there is nothing in the ballot language or in Section 23 suggesting it is NOT freely waivable like other constitutional rights.

4. Moreover, the freedom that each individual citizen has to contract for legal services with the lawyer of his or her choosing must remain inviolate.
5. An 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 would implicate claimants' rights under both the state and federal constitutions.
6. Finally, the interpretation of Amendment 3 in its applications is a substantive legal matter which must be addressed by the courts of this state. The petition process should not be allowed to change substantive law through rules regulating professional conduct, which is the domain of the courts through the legal process.

### **CONCLUSION**

WHEREFORE, the undersigned respectfully submits that this Court should reject the proposed amendment to Rule 4-1.5.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing has been furnished by U.S. mail upon John F. Harkness, Jr., Executive Director of the Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida 32302, and was also furnished via e-mail to [e-file@flcourts.org](mailto:e-file@flcourts.org) on this 22<sup>nd</sup> day of September, 2005.

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Diana Santa Maria, P.A.  
Atrium Centre - Suite 3060  
4801 South University Drive  
Fort Lauderdale, Florida 33328  
(954) 434-1077  
(954) 434-4462 fax