

**IN THE 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**

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**COMMENTS OF ANTHONY V. SCALESE, ATTORNEY, FLORIDA  
BAR NO. 854440 AND OBJECTIONS TO PROPOSED AMENDMENT**

The undersigned attorney, Anthony V. Scalese, 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, pursuant to Petition to Amend the Rules of Professional Conduct (hereafter *Petition*):

1. As a member in good standing of the Florida Bar since 1998 and as a practicing attorney, I hereby file this pleading to voice my opposition to the *Petition*.

2. This *Petition* is an abuse of a procedural privilege extended to each member of the Bar to seek changes in the rules regulating our profession in order to advance our profession and our professionalism. This *Petition* is in no way intended to advance our practice or benefit jurisprudence. The *Petition* is a veiled

attempt on behalf of the Florida Medical Association, an undisclosed client, in an effort to gain a litigation advantage as to the constitutionality of Amendment Three (3).

3. The Petition on behalf of this undisclosed client is an attempt to make Amendment Three (3) changes in the form of a Bar rule and thereby avoiding the ultimate test of this Amendment's underlying legality under our State and Federal Constitution. There is no question that Amendment Three (3) and the Petition is unconstitutional under both the State and Federal Constitution.

4. This Petition, as well as Amendment Three 3, is unconstitutional as it violates medical malpractice victim's rights to due process, equal protection, access to courts as well as freedom of association. Further, such a rule change would prohibit the victim's right to waive one constitutional right in favor of another potentially conflicting right. There is no question that the constitutionality of this Amendment should be addressed by our judiciary and not circumvented by this Petition in its disingenuous, veiled attempt to change our professional rules of conduct.

5. Respectfully, I strongly oppose the Petition and request that this Honorable Court deny the Petition to Amend the Rules of Professional Conduct.

**Certificate of Service**

**I Hereby Certify** that a true and correct copy of the foregoing was served this \_\_\_ day of August, 2005 by U.S. Mail on: 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.

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By  
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