

**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 SCOTT D. SHEFTALL, ATTORNEY  
FLORIDA BAR NO. 231398 AND OBJECTION TO  
PROPOSED AMENDMENT**

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Scott D. Sheftall 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.

1. It is essential for the Court to understand that the Grimes Petition proposing the aforementioned rule changes is a completely misguided interpretation of the provisions of Amendment 3.

2. Nowhere in Amendment 3 does it state, or even hint at, limiting attorney's fees or access to the courts in medical malpractice cases. The voters were told that Amendment 3 would grant a claimant the right to keep a certain portion of any medical malpractice settlement or award. By proposing rules restricting the rights of victims to pay lawyers what they choose, the Grimes Petition is asking the Court to go beyond the bounds of what Amendment 3 was intended for. Surely, if the voters of Florida were aware that passage of Amendment 3 would mean a limit on what could be paid for quality legal representation and restrictions on the freedom to contract with the lawyer of their choice, they likely would not have voted for it.

3. The freedom all citizens share in being able to contract with the attorney of their choice is all but over if the proposed Rules limiting contingency fees for a medical malpractice case are accepted. The Rules would make it nearly impossible for competent lawyers to take on medical malpractice cases. These cases often cost tens and even hundreds of thousands of dollars for the attorneys who handle them. Few, if any, competent lawyers could take on this amount of risk under the proposed Rules, leaving those injured by medical malpractice without the representation needed to recover what is due.

4. Further, victims of medical malpractice should have the freedom to waive the rights given to them by Amendment 3 and pay their attorneys whatever they think they are worth. It is up to the victims of medical malpractice, not the Court, to search out the best value for the services they require from a lawyer. The proposed Rules would leave victims of medical malpractice little choice but to accept the low quality legal representation that would be forced upon them.

5. It must be stated again that the intention of Amendment 3 was not to require a Bar rule restricting attorney's fees in medical malpractice cases. The intention was to allow more recovery for the victims of medical malpractice. Respectfully, the Court's purpose is to interpret ripe and justiciable controversies that come before it in the context of litigation, not to interpret constitutional amendments by the quasi-legislative act the Petition here calls for.

6. Therefore, I oppose the Petition and request that this Honorable Court deny the Petition.

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651 Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee, Florida 32302-0810 on this 27<sup>th</sup> day of September, 2005.

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By:           /s/ Scott D. Sheftall            
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