

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC05-1150

**COMMENTS AND OBJECTION TO GRIMES' PETITION TO AMEND
THE RULES OF PROFESSIONAL CONDUCT**

Anthony F. Sos respectfully submits the following comments 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. I am a practicing attorney and a member in good standing of the Florida Bar. I have read the Petition to Amend the Rules of Professional Conduct (hereinafter referred to as “Petition”), which was filed by Stephen H. Grimes. The purpose of this pleading is to convey my comments and objections to the Petition.

2. In short, the issue involved in the Petition is whether it is unethical for a lawyer to represent a victim of medical malpractice for a higher contingency fee than permitted by the fee schedule under amendment three.

3. The Petition alleges that a lawyer who enters into a contingency fee contract with a client for a fee more than permitted under the amendment would “put the lawyer in an unethical position.” I take exception to this broad allegation

as it flies in the face of a citizen's absolute privilege to waive certain constitutional rights. So long as the waiver is done knowingly and voluntarily, there is no ethical quandary. Nowhere in the ballot language of amendment three did it state that a person could not waive the fee schedule set out in amendment three.

4. It is important to remember that the purpose of Rule 4-1.5 is to prohibit a lawyer from charging excessive fees. It has never been judicially determined that the fee schedule most Plaintiff attorneys utilize in medical negligence cases is excessive. To the contrary, the contingency fee schedule delineated under 4-1.5(f)(B)(i) is specifically not considered to be excessive. Thus, amending Rule 4-1.5 to conform to the fee schedule under amendment three would not serve the purpose of Rule 4-1.5, which is to prohibit a lawyer from charging excessive fees.

5. Unfortunately, the primary consequence of incorporating the language of amendment three into the Rules of Professional Conduct will be a limitation to court access by the citizens of Florida, which is in direct conflict with Article I, Section 21 of the Florida Constitution. Moreover, this is the exact reason why the Florida Medical Association advocated for the passage of amendment three, to limit court access, to prevent victims of malpractice to seek redress through our court system.

6. The official sponsor for amendment three was an organization called, “Citizens for a Fair Share, Inc.” The strongest proponent for the amendment was The Florida Medical Association. The Florida Medical Association presented a message stating that amendment three would “ensure patients receive their fair share of the compensation in medical liability claims.” Ironically, The Florida Medical Association has consistently advocated for legislation that would cap damages in medical malpractice cases, thus limiting the compensation a victim would receive in medical liability cases. The Florida Medical Association’s goal in pushing amendment three was not so citizens could have a fair share, rather, the goal was to reduce the number of medical malpractice cases by limiting the number of attorneys who would handle these cases because of the reduced fee schedule. There is no reason that these political games should in anyway be incorporated into The Rules Regulating the Florida Bar.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this _____ day of September, 2005, to Executive Director of the Florida Bar, John F. Harkness, Jr., 651 East Jefferson Street, Tallahassee, Florida 32399-2300 and Stephen H. Grimes, Post Office Drawer 810, Tallahassee Florida 32302.

**DELLECKER WILSON KING
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BY: _____

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Florida Supreme Court
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