

# 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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## **RESPONSE TO PETITION BY JOHN W. STAUNTON, ESQUIRE**

This is a Response to the Petition filed by former Justice Grimes that seeks to amend the Florida Rules of Professional Conduct Rule 1.5(f)(4)(B). If given effect, the Grimes Petition would make an inappropriate change to substantive law by changing rules that regulate professional conduct. I file this Response as both an attorney and as a citizen who is concerned about the eroding rights of free and open access to the Courts of this State. While I am an active member of various professional associations, this Response does not necessarily reflect the views of these organizations and is not being filed to imply that such is the case.

My practice area is focused on Elder Law and is therefore primarily a transactional practice. I work with both senior citizens and younger people with disabilities because both of these groups face similar problems and often have very similar legal needs. My practice frequently includes helping people who have become disabled due to the negligence of others, and in this regard, I am often

contacted by members of the plaintiff's bar to assist these clients. I experience first hand how injured clients can benefit and dramatically improve the quality of their lives upon the receipt of a settlement award. In this regard, I strongly believe that no action should be taken on any front that will reduce the ability of such injured people to have a fair and honest hearing of their grievances before a jury of their peers. I equally believe that, if granted, the Grimes Petition will reduce this ability.

In addition to my philosophical objections, and my belief that the relief sought in this Petition will play its own unique role in eroding our democracy, I note at least two practical problems for consideration that argue against it. The Comment to Rule 4-1.1 of the Rules Regulating the Florida Bar, which speaks to competent representation, provides in part that: "Competent handling of a particular matter includes . . . adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence."

Since medical malpractice cases typically involve complex factual issues and present major litigation, attorneys who litigate these cases devote considerable time and attention so as to provide competent representation. If the Grimes Petition is granted, it will become a financial impossibility for these attorneys to devote the time and attention necessary for competent representation. At this

junction, they will be faced with the unpleasant decision of violating the current Bar Rules or of declining representation. I have full faith and confidence that the majority of the Bar will decline representation under these circumstances, both in fairness to a potential client and in fulfillment of their ethical obligations. I fear, however, that proponents of the Grimes Petition share this same faith and confidence, and that this is in fact what has led them to file the Petition in the first place. The true proponent behind the Grimes Petition is the Florida Medical Association, and it seems evident from its long history that this entity wants to eliminate medical malpractice lawsuits entirely.

The second practical problem the Grimes Petition does not address is what will happen in the many cases where an injured client has received Medicare and/or Medicaid as a result of their injury. I know from first hand experience in my practice that Medicare and Medicaid are the payors of last resort. This means that both Medicare and Medicaid have statutory liens and/or subrogation rights that require injured parties to repay the Federal and/or State government for all of the medical care they have received. If a client is entitled to a fixed amount or percentage, it is not clear how this repayment for medical care will be calculated into the overall settlement or how much, if anything, would be available to pay the attorney who achieved success for the client.

## CONCLUSION

If the Grimes Petition is successful, many victims of medical malpractice will not have free and open access to the Courts of this State because no attorney will be able to offer competent representation. The Petition is nothing more than a bold effort to thwart justice by severely limiting access to the Courts for those wrongly injured due to medical malpractice. It would constitute bad public policy and would run counter to the very democratic ideals on which this nation was founded. For these reasons, this Honorable Court should deny the request to modify Rule 1.5(f)(4)(B).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing original and an electronic copy as well as eight copies were sent to the Clerk of the Supreme Court of Florida by overnight delivery on September 29, 2005 pursuant to the Court's Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13, 2004, and that a true and correct copy of the foregoing was served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 and Stephen H. Grimes, Counsel for Petitioners, Holland & Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810 on this the \_\_\_\_\_ day of September, 2005.

By: \_\_\_\_\_  
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