

SUPREME COURT OF FLORIDA
CASE NO. SCO5-1150

In Re: Petition to Amend Rules
Regulating the Florida Bar-
Rule 4-1.5(f)(4)(B) of the
Rules of Professional Conduct.

**COMMENTS OF THOMAS F. SLATER, ATTORNEY,
FLORIDA BAR NO. 0614114, AND OBJECTIONS TO
PROPOSED AMENDMENT**

The undersigned member of The Florida Bar, Thomas F. Slater, Florida Bar No. 0614114, 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. The undersigned is opposed to the proposed amendment to the Rules Regulating the Florida Bar to limit attorney's fees in medical malpractice actions submitted by private attorney Stephen H. Grimes of the Holland & Knight, L.L.C. law firm.

2. It is interesting to see that Mr. Grimes claims it is unethical to have a client forego their Article 1, Section 26 constitutional right to receive the minimum amount they are entitled to recover in medical malpractice cases so the lawyer may receive a higher fee. There is nothing unethical about the process of having a client forego this constitutional right so long as the client has made a knowing and informed rejection of the right.

3. Clients can, if they choose to do so, pay a lawyer in a medical malpractice action (or for that matter, any other type of personal injury action) on an hourly basis. If this is done and the total amount of the hourly attorney's fees reduces the amount the client ends up recovering below what is mandated in Article 1, Section 26, is this too unconstitutional? Of course not.

4. Allowing a client to waive this constitutional right is allowing the client to exercise one of their other constitutional rights (one that is far more fundamental than this right that was proposed by and grafted onto the state constitution not by members of the public at large, but by a special member group, the Florida Medical Association), the freedom to contract, the freedom of the client to hire a capable, competent lawyer they feel most confident with prosecuting their case. If the client does not want to waive

this right they can simply try and hire some other lawyer to proceed with the case pursuant to the limits set forth in Article 1, Section 26.

5. What if the electorate passed a constitutional amendment that limits all commercial or family law attorney's fees to \$75 per hour? Should we have a bar rule that limits what attorneys or law firms charge individuals or corporate clients to this hourly fee? What would be the difference between clients waiving their constitutional right to recover a certain amount in a medical malpractice action, contracting to pay the standard contingency fee set forth in Rule 4-1.5(f)(4)(B), and a corporate or individual client waiving the \$75 per hour limit and contracting to pay a particular law firm or lawyer an agreed upon higher hourly fee? Absolutely nothing.

6. Clients waive longstanding constitutional, statutory and procedural rights all the time that were "overwhelmingly approved" by voters, legislators or the courts. They waive their right to a jury trial when entering a plea agreement in a criminal trial after being fully informed of the alternatives and the consequences. They frequently agree in contractual situations to arbitrate all disputes, waiving their right to a jury trial (done typically under circumstances where they have no sufficient explanation of the importance of the right they are waiving). They often waive their rights to certain types of damages. They waive their right to have disputes heard in

certain venues or jurisdictions or the time periods to bring causes of action.

The list of rights that are frequently waived goes on and on.

7. Amending the Rules Regulating the Florida Bar as suggested by Mr. Grimes will lead to opening up an entire Pandora's Box of ugly situations wherein one group or another petitions this Court to limit a particular group of lawyers' fees. The contingency fee limits set forth by the Florida Supreme Court in Rule 41.5 (f)(4)(B) of the Rules Regulating the Florida Bar have worked well in the 16 plus years they have been in effect. There is no need to enact this proposal and amend the

rule as proposed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and eight (8) copies of this pleading have been forwarded to the Clerk's Office, 500 South Duval Street, Tallahassee, Florida 32399-1927 for filing, and that a copy of the foregoing was furnished by U.S. Mail to John F. Harkness, Jr., General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 and to Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, LLP, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 27th day of September, 2005.