

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/

**COMMENTS OF THE FLORIDA CHAPTERS OF THE
AMERICAN BOARD OF TRIAL ADVOCATES
AND OBJECTIONS
TO PROPOSED AMENDMENT**

A. Introduction:

Pursuant to Rule 1-12.1(e) of the Rules Regulating The Florida Bar, the Florida Chapters of the American Board of Trial Advocates (“FLABOTA”) submits these comments objecting to the proposed amendment to Rule 4-1.5(f)(4)(B). The Court should dismiss or deny the Petition and reject the proposed rule amendment.

B. Statement of Interest of Respondent FLABOTA:

FLABOTA is the statewide legal organization of the eleven chapters in Florida of the American Board of Trial Advocates. It is composed equally of both plaintiff and defense lawyers who become members by invitation and are recognized as experienced civil trial lawyers. FLABOTA was formed in 1992 to “foster improvement in the ethical and technical standards of practice in the field of trial advocacy to the end that individual litigants may receive more effective representation and the general public is benefited by

more efficient administration of justice consistent with time-tested and traditional principles of litigation.”

This proposed amendment is contrary to FLABOTA’s basic principles. More importantly, because it would adversely affect the public access to courts in this state by eliminating the ability of lawyers to offer representation to victims of medical malpractice, it is contrary to the very basic notions of democracy and the right to redress wrongs in the civil justice system.

C. FLABOTA Unanimously Resolves to Oppose Proposed Amendment:

On May 18, 2005, after the Petitioner gave notice that the present petition would be filed, the Board of Directors of FLABOTA debated the matter and voted unanimously to issue a Resolution in Opposition to the petition. The Resolution reads as follows:

WHEREAS, FLABOTA is a legal organization consisting of eleven chapters (five hundred and twenty-five defense and plaintiff trial lawyers) throughout the state of Florida; and

WHEREAS, the Grimes petition seeks to engraft into the Rules Regulating The Florida Bar an incorrect interpretation of the provisions of Amendment 3 to the Florida Constitution; and

WHEREAS, the interpretation of Amendment 3 and any of its applications is a substantive legal matter to be addressed through appropriate litigation in the courts of this state; and

WHEREAS, the Grimes petition attempts to inappropriately change substantive law through the rules regulating professional conduct; and

WHEREAS, the proposed subsection (iii) of Rule 4-1.5 is premised upon the as yet untested federal constitutional validity of Amendment 3; and

WHEREAS, there are numerous serious constitutional challenges likely to be raised against enforcing Amendment 3 as a cap on contingency fees, including impairment of clients' rights to due process, freedom of association, equal protection, access to courts, as well as violations of the Supremacy Clause; and

WHEREAS it is an infringement of State and Federal Constitutional rights to interfere with any individual's existing right under the current Florida Bar Rules to contract with a lawyer of his or her choice and to waive the existing provisions of Rule 4-1.5; and

WHEREAS, the effect of the proposed rule changes sought by the Grimes petition would unfairly impair the right of access to the judicial system to victims of medical malpractice.

NOW, THEREFORE, it is hereby resolved and agreed as follows:

1. The Florida Chapters of the American Board of Trial Advocates (FLABOTA) opposes the rule changes contemplated by the Grimes petition, and
2. FLABOTA urges the Supreme Court of Florida, the Board of Governors of The Florida Bar as well as the Disciplinary Procedure Committee of The Florida Bar, to DENY THE GRIMES PETITION AND REJECT ITS PROPOSED CHANGES TO RULE 4-1.5(f)(4)(B).

A copy of the signed resolution is attached as Exhibit A.

CONCLUSION

WHEREFORE, the Florida Chapters of the American Board of Trial Advocates respectfully submits that this Court should reject the proposed amendment to Rule 4-1.5.

Respectfully submitted,

HERMAN J. RUSSOMANNO
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By: _____
HERMAN J. RUSSOMANNO
Florida Bar No. 240346

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by First Class Mail upon John F. Harkness, Jr., Executive Director, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; Stephen H. Grimes, Counsel for Petitioners, Holland & Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810 on this the ___ day of September, 2005.

HERMAN J. RUSSOMANNO