

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 GREGORY T. ZELE, ESQUIRE AND OBJECTIONS TO PROPOSED AMENDMENT

A. Introduction:

Pursuant to Rule 1-12.1(g) of the Rules Regulating The Florida Bar, the undersigned submits these comments objecting to the proposed amendment to Rule 4-15(f)(4)(B). The Court should dismiss or deny the Petition for any of the following reasons:

1. Amendment 3 is unconstitutional as it violates the rights of malpractice victims to due process, freedom of association with respect to right to contract, equal protection, access to the courts, and right to contract. A Rule change of this nature prevents the victim's right to waive a constitutional right (assuming the Amendment was constitutional) in favor of another conflicting right. Amendment 3's constitutionality should be addressed by the judiciary and not sidestepped by the Grimes petition in a disingenuous effort to alter our Rules of Professional Conduct.
2. Amendment 3 represents unjustified interference into the right of private parties

to contract as they so choose and, therefore, violates provisions of both the Florida and United States Constitutions.

3. The Rules regulating The Florida Bar should only be changed if determined by The Florida Bar and its members. Instead, the Florida Medical Association is engaging in an end run around the Rules regulating The Florida Bar and seeking to introduce Amendment 3 into a Bar Rules change, thereby avoiding a test of the amendment's underlying legality under the State and Federal Constitutions.
4. This Rules change is being pushed with the assistance of the Florida Medical Association, a private client, and not by some altruistic motives by members of The Florida Bar. Therefore, the change is being done solely to gain a litigation advantage regarding the constitutionality of Amendment 3, which is already being pursued through the appropriate legal channels.
5. If Amendment 3 is construed to limit contingency fee contracts, it will raise a number of federal constitutional questions that will need to be properly presented and ruled upon by the courts of this state. This Court should not consider adopting any Rule regulating Florida lawyers prior to the resolution of those issues.
6. Adopting the petition would be contrary to the Florida Constitution, the Federal Constitution and decisions of this Court recognizing the right and value of representation by competent counsel, as well as public policy.

A. Statement of Interest:

The undersigned is a member of The Florida Bar and is engaged in the active

practice of civil trial law. It has been my experience that in my practice, the vast majority of my clients would not be able to pay an hourly fee to secure representation, but rather can only secure adequate representation through the use of a contingency fee contract. It has been my experience that the defendants I have litigated against do not have a similar disadvantage in that, typically, they are large corporations and/or insurance companies who can afford to pay the hourly rates charged by defense lawyers and their firms. Furthermore, the Petition filed by Stephen Grimes and the Florida Medical Association does nothing to interfere with the right of the defense attorneys and insurance companies to contract to pay a reasonable hourly rate for their services. As an attorney, I believe that I have an obligation to do everything in my power to protect the rights of my clients and those who may become my clients in the future. As a result, I strongly object to the proposed Amendment and urge the Court to dismiss or deny the Petition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via regular U.S. mail this _____ day of August, 2005, to: 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.

Gregory T. Zele
Lytal, Reiter, Clark, Fountain & Williams, LLP
515 N. Flagler Drive, Suite 1000
West Palm Beach, FL 33401
(561) 655-1990 Fax: (561) 832-2932
Florida Bar No. 127248