

**From:** Sherry Zellner [SZellner@Wilkinslaw.com]  
**Sent:** Thursday, August 04, 2005 10:19 AM  
**To:** e-file  
**Subject:** Filing in SC05-1150

**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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**COMMENTS OF GARY L. WILKINS, ATTORNEY,  
FLORIDA BAR NO. 185400 AND OBJECTIONS TO  
PROPOSED AMENDMENT TO THE RULES  
REGULATING THE FLORIDA BAR**

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Gary L. Wilkins 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. As a member of the Florida Bar and a practicing attorney with over 25 years experience in handling medical negligence cases, I file this pleading to voice my opposition to the Grimes? Petition.
2. This Petition is an abuse of a procedural privilege extended to each of us as members of The Florida Bar to seek changes in the rules regulating our profession to advance

Petition

our profession and our professionalism. The Grimes

is not intended to advance our practice or benefit  
jurisprudence. Instead, the Petition is filed on behalf of an  
undisclosed client (The Florida Medical Association) in an  
effort to gain a litigation advantage as to the  
constitutionality of Amendment 3, an issue which should

and

must be appropriately litigated in the trial courts of this

state.

3. Rather than an effort to improve our Bar through rule  
change, the Petitioners and their shadow client (the FMA)  
seek to graft Amendment 3 onto a Florida Bar change and  
thereby avoid a test of the Amendment's underlying

legality

under our State and Federal Constitutions. Such efforts

are

clearly premature at best and ulterior at worst.

4. Amendment 3 is unconstitutional as it violates the rights of  
malpractice victims to due process, freedom of

association,

equal protection, and access to courts. Moreover, a rule

change of this nature would prevent a victim's right to  
waive  
one constitutional right (assuming for argument's sake  
the  
Amendment was constitutional) in favor of another  
potentially conflicting right. The constitutionality of  
Amendment 3 should be addressed by our judiciary and  
not side stepped by the Grimes Petition in it disingenuous  
effort to alter our professional rules of conduct.

Amendment

3, on its face, addresses the issue of a client's right to  
receive a percentage of damages, a right which should,  
and  
must, be waivable if necessary or desired in order to  
secure  
competent representation.

5. Therefore, I oppose the Petition and request that this  
Honorable Court deny the Petition.

### **CERTIFICATE OF SERVICE**

I Hereby Certify that a true and correct copy of the foregoing was  
served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651  
East Jefferson Street, Tallahassee, Florida 32399-2300 and Stephen H. Grimes,

Counsel for Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee,  
Florida 32302-0810 on this the \_\_\_\_\_ day of August, 2005.

WILKINS, FROHLICH, RUSSELL,  
HANAOKA & MIZELL, P.A.  
18501 Murdock Circle, 6<sup>th</sup> Floor  
Port Charlotte, Florida 33948

By: \_\_\_\_\_  
Gary L. Wilkins  
Florida Bar No. 185400