IN THE SUPREME COURT OF FLORIDA

CASE NO: SC05-1150

IN RE: PETITION TO AMEND
RULE 4-1.5(f)(4)(B) OF THE
RULES OF PROFESSIONAL CONDUCT
_____/

**COMMENTS OF JOHN BALES, ATTORNEY, AND**
**OBJECTIONS TO PROPOSED AMENDMENT**

The undersigned member of The Florida Bar, John Bales, 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. There is no basis for subjecting medical malpractice lawyers to more stringent contingency-fee standards than those imposed on other personal-injury lawyers under Rule 4-1.5(f)(4). It is difficult to understand why a Florida lawyer who brings a products liability case for an injured client should be ethically permitted to charge a higher contingency fee than a lawyer who brings a medical malpractice case for the same client and obtains compensation for the same injury. The legal nature of the client's claim bears no relationship to the considerations that have historically governed the issue of reasonableness in the context of disciplinary proceedings. *See* Rule 4-1.5(b) (listing factors to be considered in determining whether a fee is reasonable or excessive). This unjustified ethical

distinction between medical malpractice attorneys and other personal-injury attorneys is a powerful and sufficient reason to reject the proposed Amendment.

2. Justice Lewis' dissent from this Court's opinion upholding the ballot summary for Amendment 3 peers through their smoke and mirrors.

> Clearly, the proposed amendment as written portrays that it will provide protection for citizens by ensuring that they will actually personally receive a deceptive amount of all money determined as damages in any medical liability action. However, the amendment actually has the singular and only purpose of impeding a citizen's access to the courts and that citizen's right and ability to secure representation of a redress of injuries. Its purpose is to restrict a citizen's right to retain counsel of his or her choice on terms chosen by the citizen and selected counsel and to thereby negatively impact the right of Florida citizens to seek redress for injuries sustained by medical malpractice. This is truly a wolf in sheep's clothing.

Advisory Opinion to the Attorney General Re: The Medical Liability Claimant's Compensation Amendment, 880 So.2d 675, 683 (Fla. 2004, Lewis J., dissenting)

3. The proposed Rule would not help or in any way benefit the injured victims, but will rather eliminate the willingness of counselors to accept the responsibility for such matters with the economic restrictions imposed. As stated by Justice Lewis:

> Pursuant to Florida law, medical negligence actions are currently highly regulated, and, unquestionably, Florida's citizens require the assistance of knowledgeable and experienced attorneys to navigate through the extensive and complicated process. Those attorneys who have

> worked years to gain expertise in this highly specialized field are certainly entitled to reasonable compensation. If enacted, the proposed amendment will not eliminate the process an injured citizen must follow, but is designed to and will undoubtedly eliminate the willingness of counselors to accept the responsibility for such matters with the economic restrictions imposed.

*Id*. 683.

4. The inevitable effect of the proposed Amendment will be to hurt, if not eliminate, a medical malpractice victim's ability to seek redress in a court of law. Clearly, plaintiff's medical malpractice attorneys will leave their field and move into other fields where they can charge a fee that is commensurate with their skills and sufficient to cover the risk and expense of the litigation. The result will be a shortage (if not elimination) of plaintiff's medical malpractice attorneys in Florida.

5. It is well known that a person may waive his constitutional rights including the right to travel, *Larson v. State,* 572 So.2d 1368 (Fla. 1991); the right to remain silent, *Philmore v. State,* 820 So.2d 919 (Fla. 2002); the right to a 12-person jury in a murder case, *Groomes v. State,* 401 So.2d 1139 (Fla. 3d DCA 1981); the right to trial by jury, *Scss Ums v. State*, 404 So. 2d 1072 (Fla. 3d DCA 1981); and the criminal defendant's right to testify on his or her own behalf, E.g. *Brown v. State*, 894 So.2d 137 (Fla. 2004). It would be illogical for this court to rule that a person has the right to waive their fundamental rights but a victim of medical malpractice should not be allowed to waive the right to a predetermined attorney.

6. There is nothing about the "right" assumedly established by Amendment 3 that is deserving of different treatment than any other right under the state or federal constitutions.

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy hereof has been furnished by U.S. Express Mail to the following on _____, 2005:

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