IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC05-1150

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

These comments are submitted to the Court pursuant to this Court=s order dated June 29, 2005, regarding the petition to amend the Rules Regulating the Florida Bar - Rule 4.15(f)(4)(B) relating to contingency fees in personal injury cases:

I am a practicing trial attorney who has litigated medical malpractice cases for the past eight years. For half of that time, I litigated on behalf of Defendant medical care providers. Having become frustrated with the medical profession=s failure to police themselves and with insurance companies= failure to pay meritorious claims, in the year 2000, I began representing patients who had been injured as a result of medical negligence.

Medical malpractice is a very complicated area of practice. It requires

special knowledge of very complex issues. Additionally, these types of cases involve enormous expense, a lengthy time to bring the matter to resolution, and a very high risk of an unfavorable outcome for the Plaintiff.

It would be my estimate that most medical malpractice cases take over two years and hundreds and hundreds of hours to prosecute. Costs in pursuing these types of cases, depending on the number of Defendants, is usually between $75,000.00 to $125,000.00. The cases usually involve a great amount of out-of-state travel to obtain depositions of medical experts around the country.

If a Plaintiff is not able to settle his or her case prior to going to trial, the odds of prevailing in a medical negligence case, particularly in light of all the negative publicity about these types of cases, is not good at all. If that occurs **B** if a Plaintiff does not prevail at trial -- the attorney receives nothing for her years of hard work. Additionally, she must absorb the loss of the significant costs incurred in pursuing the claim.

For all of these reasons, the only way a Plaintiff=s attorney can afford to represent a Plaintiff in a medical malpractice case is to charge a reasonable contingency fee according to the current percentages authorized by existing Rules of Professional Conduct 4-1.5(f)(4).

It was by no mistake that the Florida Medical Association, hospitals and doctors across our state lobbied so diligently for the passage of Amendment 3 **C** an amendment which purports to limit attorneys= fees in medical malpractice cases. The goal was simple and straightforward: to eliminate the ability for a citizen of the State of Florida to retain a qualified attorney to represent him or her in a medical negligence case. Unfortunately, many of our state=s citizens were fooled by all of the advertising done by the medical profession into believing that this Amendment would some how improve their medical care and make it easier, and more economical, to hire an attorney of their choosing. For the reasons set forth herein, this Petition should be rejected.

First, this Petition should be rejected because the interpretation and application of Amendment 3 is a substantive legal issue to be addressed through appropriate litigation in the Courts of this State. On its face, the Amendment does not limit attorneys= fees, but instead places a cap on the amounts by which awards can be reduced for expenses other than attorney=s fees including Medicare, Medicaid and hospital liens. Until the application and interpretation of this Amendment is ascertained, amending the professional rules of conduct is simply premature.

Second, and more importantly, this Amendment clearly violates the

Constitution of our State and of the Constitution of the United States. It impairs a patient=s rights to due process, freedom of association, equal protection and access to the courts. It also eliminates the right to knowingly waive a constitutional right.

Not only does the Amendment violate the constitutional rights of the patient who seeks redress for his or her injury due to medical negligence, it also violates the rights of attorneys, such as myself, by interfering with our right to contract with clients for a fair and reasonable fee. In sum, it imposes unreasonable, unconstitutional discriminatory restrictions on the rights of patients and attorneys in medical malpractice cases, as compared to any other type of personal injury cases.

The petition that is currently pending before this court to amend the rules of professional conduct is an attempt to bypass the constitutional questions involved with the Amendment itself. Any consideration of change to the Rules of Professional Conduct should be postponed until litigation has concluded as to the constitutionality of this Amendment.

In conclusion, the Supreme Court should reject the proposed amendments to Rule 4-1.5(f)(4)(B) and allow the rule to stand as written.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing original and an electronic copy, as well as eight copies were sent to the Clerk of the Supreme Court of Florida, by mail this 15th day of July, 2005, pursuant to the Court=s Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13, 2004.

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