

**IN THE SUPREME COURT OF FLORIDA**

**CASE NUMBER SCO5-1150**

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

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**Comments Regarding the Petition to Amend**

These comments are respectfully submitted pursuant to this Court's Order dated June 29, 2005 regarding the Petition to Amend the Rules Regulating the Florida Bar Rule 4-1.5(f)(4)(B).

I am a civil trial lawyer who has been in practice since 1989. My practice has included the representation of both plaintiffs and defendants in medical negligence cases. My last medical negligence trial occurred in February, 2005 wherein I represented the plaintiff. The trial lasted two weeks and I had worked on the matter for several years. My firm expended over \$125,000 in litigation expenses to prepare and try this case. This type of preparation and expense is typical in medical negligence cases.

The limitation on contingency fees, which is proposed by the subject amendment, would eliminate the feasibility of representing plaintiffs in medical negligence cases. The contingency fee currently provided in Rule 4-1.5(f)(4)(B) works to the benefit of both the plaintiff and his or her attorney. Limiting this fee, in my opinion, would close the courthouse doors to most plaintiffs. It would certainly cause my firm to reject any

medical negligence case unless the plaintiff could afford to pay an hourly rate for representation. Given the complexity of these cases, only the rich could afford representation if the proposed amendment is successful.

The proponents of the subject amendment purport a desire for the victims of medical negligence to keep more of their recovery. In fact, the result would be a severe restriction in access to the legal system for such victims.

The proposed amendment involves a substantive legal matter which should be addressed by the courts of this state. It impacts a claimant's rights under both the state and federal constitutions. The freedom to contract for legal services should not be violated.

Thank you for your consideration.

***LILES, GAVIN, COSTANTINO  
& GEORGE***

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**R. SCOTT COSTANTINO**  
Florida Bar No.: 793280  
225 Water Street, Suite 1500  
Jacksonville, Florida 32202  
Phone: (904) 634-1100  
Fax: (904) 634-1234

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished to **John Harkness, General Counsel**, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL

32399-2300, and to **Stephen H. Grimes, Counsel for Petitioner**, Holland and Knight, LLP, P. O. Box 810, Tallahassee, FL 32302-0810, by **UNITED STATES MAIL**, this **29<sup>th</sup>** day of **September, 2005**.

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**R. SCOTT COSTANTINO**