

IN THE SUPREME COURT

CASE NO.: SC05-1150

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

To the Florida Supreme Court:

While you have no doubt received numerous comments to this Petition, I would like to simply address how this proposed revision to Rule 4-1.5(f)(4)(B) interferes with the ability of individuals to freely contract for legal representation and their access to state courts under Article I, Section 21 of the state constitution. There is nothing to prohibit any hospital, physician or other provider of medical services from hiring the lawyer of their choice, paying a reasonable hourly rate, and authorizing their counsel to work whatever hours necessary to vigorously defend any lawsuit. Amendment 3 was a thinly veiled attempt to restrict injured patients from obtaining counsel who, with the promise of a reasonable contingency fee within the guidelines of the Florida Bar, would prosecute a claim on their behalf with equal vigor. Nothing should prohibit a Floridian from having the option to waive their constitutional rights under Amendment 3 in order to obtain

counsel who the individual believes will provide the best legal representation for the circumstances of their case.

Amendment 3 passed and so it is moot at this stage whether the Amendment is good or bad for Floridians. However, even though the Amendment grants a right to Floridians to have counsel in a medical malpractice case charge a 30% contingency fee for recovery up to \$250,000.00, and only 10% for any amount over and above \$250,000.00, there is nothing in the law which prohibits an individual from waiving this constitutional right. In the area of Criminal law, defendant's waive their right to speedy trial and trial by jury everyday and there's nothing special about the rights granted in Amendment 3 which should elevate it above such fundamental rights granted to Floridians facing criminal prosecution.

The special interests behind Amendment 3 know this and understand that they cannot restrict the side of the contractual bargain that involves the individual Floridian who is willing to pay for counsel at a rate over and above the amounts specified in the Amendment. Thus, they have taken the unprecedented step of regulating what an attorney can and cannot accept for compensation in a medical malpractice case, notwithstanding the willingness of a potential client to waive their rights under Amendment 3 to obtain the representation of their choice. In short, the effort to install this regulation in the Rules of Professional Conduct is

nothing short of a direct and blatant effort to interfere with every Floridian's right to freely enter into a contract for legal services.

Floridians have had a long-standing right to bring a private civil action for medical malpractice against those providing medical services below the applicable professional standard of care. This right exists separate and apart from any grant by the state legislature and is protected by Article I, Section 21 of the state constitution which prohibits denying any Floridian the right of access to the courts in this state. Given the amount of time required to bring a complex medical malpractice case, it is easy to see that many meritorious claims will never be prosecuted in this state unless clients have the ability to waive their rights under Amendment 3 to the specified fee restrictions so that plaintiff's counsel will be adequately compensated in the same manner as counsel for medical providers. If an individual cannot find representation in a claim for medical malpractice because there is no counsel willing to take the case under the contingency fee arrangement specified in Amendment 3, and the individual still cannot obtain counsel even if they waive their rights under this Amendment because the attorney is restricted by the rules of professional conduct from accepting representation under a fee arrangement that differs from the proposed rule, then this amounts to an infringement on the individual Floridian's access to state courts.

Thus, if this Petition is granted, it will result in a situation where a Rule of Professional Conduct governing the Florida Bar interferes with the express right granted under the state constitution to have access to state courts and trumps individual freedom to enter into a contract. This is truly an astounding result and one which I urge the Florida Supreme Court to deny.

Respectfully submitted this ____ day of September, 2005.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John Harkness, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and Stephen H. Grimes, Counsel for Petitioner, P.O. Box 810, Tallahassee, Florida 32302-0810, by U.S. Mail this day of September, 2005

JAMES H. DANIEL