
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
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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 4-1.5(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 10 years. Medical malpractice litigation is one of the most difficult areas of civil litigation for plaintiff's attorneys due to the expense of litigation; complexity of issues and high risk of failure. Medical malpractice litigation is extremely time consuming, costly and often these cases do not go to trial for two or more years. Litigation costs advanced by Plaintiff's counsel average between $50,000 to $100,000 per case. I often find that

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malpractice trials involve the Plaintiff and his or her attorney, who have limited resources, versus a large insurance company who assign between two and five defense attorneys with unlimited resources. The only way the victims of medical malpractice can even afford to bring a claim is by having a lawyer who charges a a reasonable contingent fee according to the percentages authorized by existing Rule of Professional Conduct 4-1.5(f)(4). The Supreme Court has not and cannot delegate its ultimate authority pursuant to which it has decreed that attorney's fees must be reasonable and cannot be unreasonably high or unreasonably low. It has been longstanding that what is reasonable in a contingency fee case has been long held to be the factors such as time, difficulty, novelty or complexity of issues and contingency of the case that are outlined in Rule of Professional Conduct 4-1.5(f)(4). Why should these factors be any different in a complex malpractice case than they are in an auto injury case or a slip and fall case, except that special interest groups seeking limit victims

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of medical negligence from being able to prosecute claims, obtain adequate representation and have their day in court. For the special interest groups who placed this amendment on the Ballot to tell this Court that what it has long held (after much debate and judicial scrutiny) was reasonable for attorneys to charge is now unreasonable requiring a Rule change. It goes without saying that the economic factors involved in medical malpractice cases and the cost of prosecuting these cases it only rising. This creates greater financial risk for Plaintiff's attorneys who are both brave and skilled enough to represent the injured. There is little reason why a competent attorney would continue handling these extremely complex, expensive and utterly contingent cases if he or she was unable to make a reasonable fee for expending such a significant amount of time and resources. Frankly, if attorneys fees were limited in such a fashion as requested in the pending petition it would have the exact opposite effect that the "intent" of the amendment in the first place to improve the quality of medical

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care rendered in our State. Without the injured having the ability to seek redress for the wrongs of negligent medical professionals through competent representation in a court of law the medical professionals of this State and the insurance carrier's who insure them would not be held accountable for the wrongs to others leading in a decline in the quality of medical care for our State's citizens. Doctor's often take extra precautions and provide better care because they know that if they negligently harm a patient the patient can get his or her day in court. If this petition is approved the patient loses that day in court.

The pending petition to change that rule to restrict plaintiffs' attorneys fees to 30% of the first $250,000 and 10% of all damages in excess of $250,000 is motivated by a desire of the medical profession and the insurance industry to close the doors to the courthouse for victims of medical malpractice by making it impossible for them to hire an attorney.

The recent constitutional amendment passed by the Florida

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voters in the last election violates the constitutional rights of the minority of citizens of this State who are the victims of medical malpractice and who are desirous of seeking redress for their injuries through the judicial system.

The amendment also violates the constitutional rights of practicing trial attorneys by interfering with their rights to contract with clients for a fair and reasonable fee and by denying them due process and equal protection of the law when being retained in medical malpractice cases.

The amendment also violates the Florida Supreme Court's authority to regulate the legal profession and by imposing unreasonable and unconstitutional discriminatory restrictions on the rights of clients and attorneys in medical malpractice cases as opposed to other personal injury cases.

The pending petition to amend the rules of professional conduct to comport with the recent constitutional amendment is an attempt to boot strap the unconstitutional restrictions of the recent constitutional amendment into an ethical rule thereby

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bypassing the constitutional questions involved. The Florida Supreme Court should not allow itself to be used as an vehicle to violate the constitutional rights of the minority of citizens of this State in order to serve the whim of the majority.

The solution to the medical malpractice problem is not to legislate away the rights of the victims but to improve the quality of medical care rendered in our State. Depriving medical malpractice victims of their ability to hire an attorney is not a solution to the problem and will only make matters worse.

The 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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Kenneth E. Ehrlich, Esq.
Florida Bar #057517
EHRLICH & TIPTON, LLC
5405 Okeechobee Blvd.
Suite 301-B

West Palm Beach, FL 33417
Ph: (561) 687-1717
Fax: (561) 687-1995
E-mail: Ehrlichlaw@bellsouth.net

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 August 24, 2005 pursuant to the Court's Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13,

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2004.

Kenneth E. Ehrlich, Esq.
EHRLICH & TIPTON, LLC
5405 Okeechobee Blvd.
Suite 301-B
West Palm Beach, FL 33417
Ph: (561) 687-1717
Fax: (561) 687-1995
E-mail: _____

By: _____
KENNETH E. EHRLICH
Florida Bar No. 057517