

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**

ATTORNEY COMMENT

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 personal injury cases for the past 13 years on behalf of plaintiffs. It has been my experience that the 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.

Litigation of a typical plaintiff's= medical malpractice case takes over 2 years of hard work and requires the advancement of litigation costs of between \$75,000 to \$100,000 through trial. The trial of such cases often involve one plaintiff's= attorney versus multiple lawyers whose costs are funded by an insurance carrier with unlimited resources. As a result over 60% of plaintiff's= medical malpractice

cases that go to verdict result in defense verdicts. When that occurs the plaintiffs= attorney receives nothing for his years of hard work and must absorb the loss of the costs advanced.

The only way a plaintiffs= attorney can afford to represent a plaintiff in a medical malpractice case is by charging a reasonable contingent fee according to the percentages authorized by existing Rule of Professional Conduct 4-1.5(f)(4).

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 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 About strap@ the unconstitutional restrictions of the recent constitutional amendment into an ethical rule thereby 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,

H.E. ELLIS, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to John F. Harkness, Jr., Executive Director of the Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida, 32399-2300 and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida, 32302, by U.S. First Class Mail this _____ day of August, 2005.

H.E. ELLIS, JR.
Staples, Ellis + Associates, P.A.
41 North Jefferson Street, Suite 400
Pensacola, Florida 32502
Telephone: (850) 432-4143
Fax: (850) 438-0575
Florida Bar No.: 0934496
eellis@staplesellislaw.com
Attorney for Plaintiff