

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1150

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

**RESPONSE OF THE FLORIDA BAR TO PETITION**

The Florida Bar files this opposition to the Petition on the following grounds:

- (1) The relief sought is premature.
- (2) The Petition seeks relief that presumes validity and interpretation of a November 2004 amendment to Article I, Section 26 of the Florida Constitution before the Court has adjudicated the provision's validity and interpreted its meaning.
- (3) Issues involving validity and interpretation of a constitutional amendment are more appropriately resolved in an adjudicatory forum than through the rulemaking process.

The Board of Governors of The Florida Bar is not opposed to contingent fee schedules in principle. To the contrary, on both occasions that this Court has considered adoption of schedules, such consideration was in response to petitions filed by the Board urging that contingent fee schedules be adopted. *In re Amendment to Code of Professional Responsibility*, 349

So. 2d 630 (Fla. 1977); *The Florida Bar re Amendment to the Code Of Professional Responsibility*, 494 So. 2d 960 (Fla. 1986). At an appropriate point in time, it might again be proper for the Court to address the issue. However, the Board believes that this is not the proper time.

This Court has recognized the contingent fee as “the poor man’s key to the courthouse” and has twice found a lack of evidence of any significant abuse of contingent fees in Florida. *Id.* Nevertheless, in deference to the Legislature and concern over public perception, the Court, in response to a petition by The Florida Bar, adopted a maximum contingent fee schedule for tort cases involving personal injury or property damage. *Id.*

The current petition asks this Court to impose caps upon contingent fees that are substantially lower than those now provided in Rule 4-1.5(f). The petitioners cite nothing to suggest that there is any more evidence of abuse of contingent fees today than there was in 1986 and offer no basis for concluding that the schedule currently embodied in Rule 4-1.5, and implicitly found ethical and appropriate by this Court, should be changed. The sole basis cited in the Petition for the proposed rule change is the adoption of the 2004 constitutional amendment. Implicit in the petition is the assumption that the constitutional amendment is valid and that it is intended to be mandatory, barring individuals from voluntarily waiving the caps.

There can be no doubt that the issues of validity and interpretation will reach this Court in an adjudicatory proceeding in short order. For the Court to consider a rule change before adjudication of those issues would be to put the cart before the horse.

In the event that the Court does decide to consider a rule change at this time, the Bar requests that the Court set forth a time schedule for submissions on the merits of the proposed rule.

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**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. mail this 11<sup>th</sup> day of July, 2005 to:

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