

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

COMMENTS OF ORMAN L. KIMBROUGH, JR.
TO PROPOSED AMENDMENT

Please consider my comments objecting to the proposed Amendment to the Rules Regulating the Florida Bar - Rule 4-1.5(f)(4)(B) of the Rules Regulating the Florida Bar.

The Amendment proposed, based on the recent ballot Amendment 3, now Article I, Section 23 of the Florida Constitution, conflicts with prior provisions in Article I, Section 21 of the Florida Constitution which provides “courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”

Section 23 provides among other things that a plaintiff is “entitled to receive” certain percentages of a recovery in medical legal cases while making no mention of that person’s attorney’s fees at all. The effect of Section 23 is to restrict the rights of citizens to retain counsel of their choosing through negotiations of a contract. In order to avoid a conflict between Section 21 and Section 23, it must be recognized that the rights provided by Section 23 can be waived by citizens at their discretion.

The interpretation of Amendment 3 and its application is a substantive legal matter

which should be addressed through litigation in Florida Courts. The Amendment should not be adopted as a rule regulating attorneys' fees until such litigation occurs.

Further, the proposed Amendment to the Rules results in unequal protection of the law. The Amendment restricts the plaintiff to retain counsel through restricted contracts without a corresponding limitation of the defendant. Therefore, the attempt to effectuate substantive changes in the law through Rules Regulating Professional Conduct would result in a violation of equal protection as well as a limitation of access to courts.

CONCLUSION

WHEREFORE, I oppose the Petition and respectfully this Court to deny the proposed Amendment to Rule 4-1.5(f)(4)(B).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Executive Director of the Florida Bar, John F. Harkness, Jr., 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida 32302, **this 26th day of September, 2005.**

s/s Orman L. Kimbrough, Jr.
Orman L. Kimbrough, Jr.