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
_____/

COMMENT OF GLENN KLAUSMAN, ESQ., TO PETITION

The undersigned attorney and member of the Florida Bar hereby files the following comment to the above-referenced petition, pursuant to the invitation for comment by the Court posted in the *Florida Bar News.*

The Petition requests the Court to exercise the rule making authority of the Court to place limits on medical liability contingency attorney fees. The basis for this request is the claim the rule making authority of the court is necessary to impose limits on plaintiff medical malpractice contingency attorney fees consistent with Amendment 3, purportedly because medical malpractice claimants are waiving their right to the attorney fee limits the petitioners assert were created by Amendment 3.

The pending petition is not a petition filed by medical malpractice claimants seeking any attorney. There is no aggrieved party claiming the rule is necessary to protect the aggrieved party. Instead, the petitioners seek the rule making authority of the Court to prevent attorneys from agreeing to represent medical malpractice

claimants who wish to exercise their right to waive the contingency fee limits which arguably were imposed by the passage of Amendment 3.

Accordingly, the petition seeks to prevent medical malpractice claimants from exercising their right to contract with members of the Florida Bar who would only agree to undertake representation at contingency fee limits greater than 30% of the first $250,000 recovered and 10% of any sum greater than $250,000. The petitioners have failed to show the necessity for the imposition of the proposed rule. The argument that medical malpractice claimants are waiving the above-noted contingency fee limitations when contracting with members of the Florida Bar does not establish the necessity for the Court to impose the requested rule. Medical malpractice claimants have a federal constitutional right to contract with an attorney of their choice to pursue a highly specialized medical malpractice claim and there has been no showing of a necessity to impose the requested fee limitations on Florida Bar members who agree to accept and prosecute these cases on a contingency fee basis.

Any argument that the passage of Amendment 3 was a voter outcry to limit members of the Florida Bar from charging contingency fees on medical malpractice cases at amounts less than those stated in Rule 4-1.5(f)(3)(B) requires an interpretation of Amendment 3 that is debatable and will surely be before the

Court in a pending case wherein both the interpretation and constitutionality of Amendment 3 will be thoroughly debated in multiple extensive briefs. The clear language of Amendment 3 does not state the contingency fee agreement is limited to 10% and 30%, but instead states the claimant "…is entitled to no less than 70% of the first $250,000.00 in all damages received by the claimant, and 90% of damages in excess of $250,000.00, exclusive of reasonable and customary costs…" Is this language subject to the interpretation the amendment only imposes limits on claims against the net recovery after deducting attorney fees and costs?

Any argument of necessity to reduce contingency attorney fees in medical malpractice cases to reduce physician malpractice insurance premiums is a fantasy foisted by the insurance industry and unsupported by any record or facts. Even if there was a legally mandated required rollback in medical malpractice insurance premiums tied to a reduction in attorney fees, the arguable quid pro quo would still require further review by the Court as opposed to the rubber stamp the petitioners are seeking. Such review is necessary as the proposed fee limitations will result in eliminating access to the courts for malpractice victims.

The benefit to the public is best served by allowing an individual medical malpractice claimant to waive the purported fee limitations to enter into an agreement with counsel of their choice to pursue a medical malpractice claim.

There is no evidence before the Court of any detriment to any individual claimant by allowing the waiver. Conversely, the comments of others filed with the Court document the likelihood many medical malpractice victims would be unable to obtain counsel to prosecute redress of their medical malpractice claims at the proposed attorney fee limitations. The benefit to the public is best served by allowing a Florida Bar member to accept a medical malpractice case under the current Rule 4-1.5(f)(3)(B) limitations, with a client waiving whatever limitation Amendment 3 may have upon attorney fees.

Respectfully submitted,

Glenn Klausman, Fla. Bar No. 0215260
Jacobs & Goodman, P.A.
890 SR 434 North
Altamonte Springs, FL 32714
407-788-2949 / fax 407-788-8628
gklausman@jacobsandgoodman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. regular mail this 30th day of September, 2005 to: John Harkness, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee,

FL 32399-2300 and Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810.

Glenn Klausman, Fla. Bar No. 0215260
Jacobs & Goodman, P.A.
890 SR 434 North
Altamonte Springs, FL 32714
407-788-2949 / fax 407-788-8628