

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC05-1150

IN RE: PETITION TO AMEND
 RULE 4-15(f)(4)(B) OF TH
 RULES OF PROFESSIONAL CONDUCT

I am a practicing trial attorney who has litigated numerous cases including those involving medical malpractice. Our law firm is represented hundreds of clients who lives have been turned upside down due to medical misconduct.

Of all of the areas of personal injury that I practice in, medical malpractice is the most complicated. It requires special knowledge of very complex issues. Additionally, these case involved extreme expenses and on behalf of our law firm, a lengthy time for the average resolution of a claim, an extreme risk of an unfavorable outcome for the Plaintiff at trial.

We resolve very few medical malpractice cases in less than two (2) years. The average case involves hundreds and hundreds of hours on the part of our staff. The average cost to bring a case depending on the number of Defendants is in excess of

\$100,000. Additionally, these cases involve a great deal of traveling due to expert depositions taking place around the country.

If we are not able to settle a client's case prior to going to trial, the odds of us prevailing in a medical malpractice case, considering all of the negative publicity about these type of cases, is less than positive. If our client does not prevail at trial, our law firm receives nothing for years of hard work and must absorb the costs which average an excess of \$100,000. Keep in mind that our law firm takes less than five percent (5%) of the medical malpractice inquiries and calls received regarding potential medical malpractice claims. Therefore, our law firm proceeds with only the best medical negligence claims with significant damages. The media and negative publicity about these type of cases have made even the strongest cases very difficult to win at trial.

For all of these reasons, the only way a Plaintiff's attorney can afford to represent a Plaintiff in a medical malpractice case is to charge a reasonable contingency fee according to the current percentages authorized by existing Rules of Professional Conduct 4-1.5(f)(4)(B).

It was quite obvious that the Florida Medical Association, hospitals and doctors across the State of Florida lobbied for the passage of Amendment 3 - an amendment which limits attorneys fees in medical malpractice cases. The goal of the medical industry and more particularly insurance company was to eliminate the ability for a

citizen of the State of Florida to obtain a qualified attorney to represent him or her in a medical malpractice case. Unfortunately, many of our voters did not understand all of the advertising done by the medical profession and insurance companies and the resulting effect it would have on potential claims. The average citizen thought that Amendment 3 would somehow improve their medical care and make it cheaper to hire an attorney of their choosing. In reality, Amendment 3 will result in more medical negligence taking place and the average citizen not be able to find an attorney to take their case no matter how good it is.

For the reasons set forth herein, this Petition should be rejected. This Petition attempts to interpret an application of Amendment 3 which is a substantial legal issue to be addressed only through appropriate litigation. A review of the amendment does not limit attorneys fees, but instead places a cap on the amounts by which awards can be reduced for expenses other than attorneys fees. Until the application and interpretation of this amendment is ascertained, amending the Professional Rules of Conduct is simply premature.

Most importantly, this amendment clearly violates the Constitution of our State and the Constitution of the United States. This amendment seeks to impair a patient's right of due process and access to the Courts. It also eliminates the right to knowingly waive a person's constitutional right. The amendment also violates the rights of

attorneys, such as myself by interfering with our right to contract with clients for a fair and reasonable contingency fee.

In summary, the Petition that is currently pending before this Court to amend the Rules of Professional Conduct attempts to bypass constitutional questions involved in the amendment itself. The Petition to consider the change to the Rules of Professional Conduct should be postponed until litigation has concluded as to the constitutionality of this amendment.

The Supreme Court should reject the proposed amendments to Rule 4-1.5(f)(4)(B) and allow the Rule to stand as written.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original along with eight (8) copies and an electronic copy of the foregoing has been provided to the Clerk of the Supreme Court of Florida by US Mail this _____ day of July, 2005, pursuant to the Court's Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13, 2004.

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