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
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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 medical malpractice cases since 1984 on behalf of Plaintiffs. It has been my experience that medical malpractice litigation is one of the most difficult areas of civil litigation for plaintiffs and their attorneys. The pre suit process, including the gathering of medical records and the retaining of a medical expert, is an expensive one. The litigation itself usually involves complex issues and high risk. With the current "war" between lawyers and doctors, it has become much more difficult to complete the pre suit process due to the pressure exerted upon doctors and the threats to doctors if they offer their services as an expert to any medical malpractice claimant.

Medical malpractice litigation is lengthy and usually requires more than two years of preparation. Litigation requires the advancement of costs as well. My experience is that Plaintiffs will incur pre trial costs exceeding $50,000 in a "simple, one-issue" case.

Trial costs are typically another $35,000 to $50,000 depending on the number of experts called to trial. The trial of such cases often involve one attorney for the "victim" versus four or five defense lawyers whose costs are funded by an insurance carrier with unlimited resources. Jury verdict studies reveal that less than 75% of these cases are decided for the victims. When a defense verdict occurs, the attorney for the Plaintiff receives nothing for the years of hard work and must absorb the loss of the costs advanced.

Limiting attorneys fees as suggested by the subject petition will result in limiting access to the courts by victims of medical malpractice. Attorneys should be allowed to continue to charge 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 or by exposing them to attorneys who are not skilled in the field.

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 boot 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 a vehicle to violate the constitutional rights of the minority of citizens of this State in order to serve the self interests of insurance carriers that write medical

malpractice insurance liability policies in this State.

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,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing original and an electronic copy as well as eight copies were sent to the Clerk of the Supreme Court of Florida by mail July 28, 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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