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
_____/

Gonzalo R. Dorta, Esq., G. Bart Billbrough, Esq, Geoffrey B. Marks, Esq, Tomas F. Gamba, Esq., and Hector J. Lombana, Esq. respond to the petition to amend Rule 4-1.5(f)(4)(B) of the Rules Regulating The Florida Bar. We are trial and appellate lawyers in Miami-Dade County who, during the course of our respective careers, have represented both claimants and health care professionals in medical negligence claims and lawsuits. We respond in opposition to the proposed petition.

Introduction

Under the pretense of constitutional enforcement, a small group of lawyers on behalf of an interest group asks the profession to single out a select group of lawyers specializing in a much needed, highly valued and specialized practice area by imposing contingent fee restrictions that are in the nature of a maximum wage law. The reality of this petition is a unilateral action by the Florida Medical Association, an interest group representing physicians, seeking to gain an economic and legal advantage under Florida law. The interest group, through paid members of

this State's Bar, asks this Court to impose an unprecedented unilateral limitation on the contingent fee of a certain class of litigants without imposing similar limitations on their attorney's fees. The Court is now asked to join this effort to allow the medical and insurance industries' acquisition of a permanent legal and unfair advantage over those whom they have injured by depriving the citizens of Florida of their constitutional and individual rights to contract freely and to dispose of their property as they see fit.

While there is no dispute that Florida's voters adopted the constitutional amendment which speaks about plaintiff contingent fees in medical negligence cases, there is no precedent for the regulating authority to unilaterally impose such a constitutional limitation on a select group of lawyers nor eliminate the right of the client to waive the limitation as the client is free to do in many instances. Finally, a mechanism exists for exceeding the self imposed fee limitations on personal injury cases, and there is no reason for the Bar to abandon this procedure to the detriment of a limited class of lawyers practicing in the specialized area of plaintiff's medical negligence representation.

Background

In November of 2004, the voters of this state passed Amendment 3, described

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on the ballots as the "Medical Liability Claimant's Compensation Amendment." This amendment is now found in Article I, Section 26 of the Florida Constitution, entitled "Claimant's right to fair compensation", and it provides as follows:

> (a) In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.
>
> (b) This Amendment shall take effect on the day following approval by the voters.

The amendment can be interpreted to limit fee agreements between client and lawyer only in circumstances when the representation involves medical negligence and the fee agreement is contingent.

The advocates of Amendment 3, principally the Florida Medical Association, sought to substantially impair the rights of this state's injured citizens as a result of medical negligence. It is well known that the prosecution of a medical negligence claim is a complex exercise involving substantial pre-suit and post-suit proceedings. *See* Chapter 766, Fla. Stat; Fla.R.Civ.P. 1.650; *see also Advisory Opinion to the*

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Attorney General Re: The Medical Liability Claimant's Compensation Amendment, 880 So.2d 675, 683 (Fla. 2004) (Lewis, J. dissenting) (summarizing Chapter 766 procedure and case law analyzing same). Indeed, only the experienced plaintiff's counsel should venture through the twists and turns of deciphering the Florida statutes and rules for medical negligence cases lest they fall into one of the many traps and tricks not readily apparent to the novice or less experienced practitioner. *See Zacker v. Croft,* 609 So.2d 140, 141-42 (Fla. 4th DCA 1992) (While the procedures for medical malpractice "were not designed to function as a trap for litigants, they have nonetheless become just that – a trap. . . ."). The hard costs associated with a practitioner's preparation of a suit for filing may well be higher than any other kind of litigation in this state. Further, once pre-suit investigation is complete and the lawsuit is filed, there are often multiple potentially responsible party defendants, adding yet further costs and complexity to the pursuit of justice. There can be little dispute that practitioners handling medical malpractice claims must have a high degree of competency and experience to successfully establish liability and recover damages for a client. *See Advisory Opinion,* 880 So.2d at 680, 683 (Fla. 2004) (Pariente, J. concurring) ("If approved, the amendment may well hamper citizens' ability to press their medical liability claims because its ceiling on

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contingency fee percentages would discourage the participation of knowledgeable and experienced counsel."); (Lewis, J. dissenting) ("If enacted, the proposed amendment will not eliminate the process an injured citizens must follow, but is designed to and will undoubtedly eliminate the willingness of counselors to accept the responsibility for such matters with the economic restrictions imposed.").

As noted by Justice Lewis in *Advisory Opinion*, the proponents of Article I, Section 26, Florida Constitution, sought to adversely impact injured individuals by financially limiting available legal representation in medical negligence cases. The provisions of Article I, Section 26 "adversely impact representation as to eliminate most, if not all, actions by restricting the terms of any representation agreement between the citizen and selected counsel. . . . Without knowledgeable and experienced attorneys to provide representation, the citizens of Florida will have no meaningful access to the courts, and the end result will be that the courthouse door will be open to only those wealthy enough to afford to compensate an attorney on some non-contingency fee basis." *Advisory Opinion,* 880 So.2d at 685-86 (Lewis, J., dissenting).

The harsh reality of Article I, Section 26 is that it seeks to stifle an injured person's ability to get an attorney by taking away the counselor's incentive to take the

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case. By limiting a citizen's right to contract for the counsel of his or her choice, and in this case, the right to obtain a necessarily highly competent and experienced lawyer, the fee limitation proponents seek to impair the citizens' right to access the courts as guaranteed by the Florida Constitution.

Because the economic reality of this type of litigation makes it impossible for lawyers to represent their clients under these circumstances, those who have dedicated their professional lives to the representation of injured patients and victims of medical negligence are attempting to solve this dilemma by using "Amendment 3 Waivers" or have incorporated Article I, Section 26 waiver language into their fee agreements. A small group of paid and unaffected professionals acting on behalf of the economic interests of the unaffected class of litigants seeks to impose a regulation rule that would pretermit the right of client and lawyer to freely choose the terms and conditions of the financial compensation component of legal representation. By this proposed regulation, the medical profession and insurance interests are trying to gain an economic advantage by regulating plaintiff contingent fee lawyers. They are not interested in litigants as a class but in limiting the rights of some litigants, those seeking to recover against them, by controlling their ability to pay a market rate for legal services and thereby acquire competent and effective representation.

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Constitutional Rights Subject to Waiver

Over seventy-five years ago, this Court made very clear that any citizen's rights, be they secured by contract, conferred by statute, or guaranteed by the constitution, are subject to being waived. *Rader v. Prather,* 100 Fla. 591, 130 So. 15 (1930); *see A.D.W. v. State,* 777 So.2d 1101 (Fla. 2d DCA 2001). So, as the debate begins on the issue of the viability of an Article I, Section 26 waiver, the Court must necessarily consider its longstanding statements regarding constitutional rights – they are subject to waiver.

Indeed, one need only thumb through the Florida Statutes Annotated volumes containing the Florida Constitution to see cases in which other Article I rights have routinely and repeatedly been the subject of waivers by Floridians. Our constitution contains a number of Article I protections which are fundamental to the protection of life, property and liberty. Nonetheless, for years courts on both the state and federal level have recognized that core constitutional protections designed to protect life and liberty may be waived, either overtly or by deed.

For example, a criminal defendant may waive his Article I, Section 9 constitutional protection against double jeopardy by entering into a bargained-for plea agreement. *Lewis v. State,* 827 So.2d 1052 (Fla. 5th DCA 2002). Similarly, a citizen

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may waive his Article I, Section 9 constitutional protection against self incrimination. *Sapp v. State,* 690 So.2d 581 (Fla. 1997); *see also Miranda v. Arizona,* 384 U.S. 436 (1966). Under Florida constitutional law, a criminal defendant may waive the constitutional rights to confrontation and cross examination of witnesses against him. *Whitney v. Cochran,* 152 So.2d 727 (Fla. 1963).

A Florida citizen may waive his or her Article I, Section 12 constitutional right to be free from unreasonable searches and seizures through consent. *Taylor v. State,* 855 So.2d 1 (Fla. 2003). A defendant who does not object at the proper time to the manner in which a criminal information was signed and sworn to waives the right to do so by habeas corpus under Article I, Section 13. *Young v. State,* 97 Fla. 214, 121 So. 468 (1929).

A citizen can waive the constitutional rights found in Article I, Section 16 regarding the rights of an accused. *State v. Kruger,* 615 So.2d 757 (Fla. 4th DCA 1993)(A defendant may waive his right to a speedy trial); *B.W. v. State,* 855 So.2d 1266 (Fla. 4th DCA 1266 (Fla. 4th DCA 2003)(Waiver of the right to a public trial occurs if no objection is raised to the procedure); *Rodgers v. State,* – So.2d –, 29 FLW S724 (Fla. 2004)(A defendant has a due process right to be present at all critical phases of a criminal trial, but that right may be waived).

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The right of the citizenry found in Article I, Section 22 – the right to a trial by jury – is also one long recognized as subject to waiver by an accused. *Blair v. State,* 667 So.2d 834 (Fla. 4th DCA 1996)(A criminal defendant may waive his right to a jury trial, or to a jury trial with less than the requisite number of jurors); *Upton v. State,* 644 So.2d 181 (Fla. 1st DCA 1994)(A criminal defendant can waive a right to any trial at all).

Turning to the federal stage, other substantial, constitutional legal rights of one involved in the criminal process have long been held subject to personal waiver by a defendant. Among these are the right to be present at trial, *see United States v. Gordon,* 829 F.2d 119, 123 (D.C. Cir. 1987); the right to trial by jury, *see Patton v. United States,* 281 U.S. 276, 312 (1930); and the right to an interpreter at trial, *see People v. Mata Aguilar,* 677 P.2d 1198, 1204 (Cal. 1984).

There are also many cases from the civil arena that recognize the longstanding rule permitting a citizen's right to waive a constitutional right. For example, it is well settled law that just as a criminal defendant can waive the right to a jury trial, so too can a civil litigant. *In re Shambow's Estate,* 15 So.2d 837 (Fla. 1943)(The right to a civil jury trial may be waived). The Article I, Section 9 constitutional protection against the confiscation or taking of property without due process of law is also

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subject to waiver. *City of Treasure Island v. Strong,* 215 So.2d 473 (Fla. 1968). The Article I, Section 21 constitutional guarantee of access to the courts, and the Article I, Section 22 constitutional right to jury trial can be waived by a party's contractual agreement to arbitrate a dispute. *Terminex Intern. Co., LP v. Ponzio,* 693 So.2d 104 (Fla. 5th DCA 1997).

Turning to the constitutional right to legal counsel itself, the rules regarding a citizen's right to waive this benefit are no different. It is axiomatic that a criminal defendant may waive his constitutional right to counsel. *Brown v. State,* 589 So.2d 987 (Fla. 2d DCA 1991). Even juveniles, one of the most protected groups of our citizenry, may nonetheless waive the constitutional right to counsel. *M.Q. v. State,* 818 So.2d 615 (Fla. 5th DCA 2002). If the constitutional right to counsel may be waived in toto, why would this Court adopt a self regulation rule that would place artificial restrictions on the counsel employment arrangement? In other words, why would Article I, Section 26 be given specialized treatment by the Florida Bar and this Court preventing waiver of the constutional amendment just like the myriad of situations outlined above.

Decisions from other jurisdictions can provide insight on this issue. While not decided on constitutional grounds, the Connecticut Superior Court in *In Re Estate of*

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Salerno held a statute which capped attorney's fees conferred **a private right** on plaintiffs who bring tort actions, and therefore, an individual plaintiff could waive rights under such a statute. So long as the rights were waived freely and voluntarily and proposed fee agreement was reasonable, the client was free to choose. *In Re Estate of Salerno,* 630 A.2d 1386 (Conn. Superior Ct. 1993). Similarly, as long as an Article I, Section 26 waiver is voluntary and reasonable, the waiver should be permitted.

The above cited cases represent merely a sampling of the many different contexts in which Article I constitutional rights have been subject to waiver by the citizens of this state. The core question bears repeating. One must ask why a citizen may waive the most fundamental constitutional protections against loss of life, liberty, and property, and yet not be able to waive the financial limitations of Article I, Section 26 to secure the lawyer of their choice on terms that are mutually agreeable to both client and lawyer. If the personal constitutional rights found in Sections 9, 12, 13, 14, 15, 16, 21 and 22 of Article I can be waived, why cannot a citizen of this state waive those found in Section 26 of that same Article? When measured against the historical backdrop of constitutional waiver legal precedent, the Amendment 3 proponents' arguments which would treat Article I, Section 26 differently make no

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sense.

Article I, Section 26 Waiver

With this history in mind, it cannot be argued that a unique public policy somehow dictates Article I, Section 26 be treated differently. Article I, Section 26 does not exist in a vacuum in our State's Constitution. By its very terms, this new constitutional section presents a challenge to the courts to reconcile its meaning when juxtaposed against other equally significant constitutional provisions, as Article II, Section 3's requirement of separation of powers; Article I, Section 10's protection of the right to contract between clients and attorneys; as well as Article I, Section 21's right of access to the courts and justice by making it more difficult to obtain counsel in certain kinds of cases. While these issues were raised in *Advisory Opinion*, and were not deemed an impediment to the voters' consideration of Amendment 3, they may yet resurface in the context of a discussion of whether the client may waive the constitutional fee limit. What should be noted here is that, as a public policy, the fee limit provision is neither more important nor less important than the other identified constitutional rights. When considered in this light, there is nothing uniquely important about Article I, Section 26's provisions that should lead to an interpretation precluding a waiver. More importantly, the allowance of fee waivers may be the only

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way to reconcile the tension between Article I Section 21's right to access to the courts and the private right conferred by Amendment 3.

It has long been the law in this state that a person may waive their constitutional rights – so long as the waiver is knowing, intelligent, and voluntary. *Blair v. State,* 698 So.2d 1210, 1213 (Fla.1997). A waiver, to be effective, must be an intentional relinquishment or abandonment of a known right. This standard stresses the consensual or "free choice" character of waiver and its ultimate reliance upon the individual's freedom to forego benefits or safeguards through the uncoerced exercise of his rational faculties.

Lawyers and clients who wish to waive the limitations of Article I, Section 26 must do so with crystal clarity and unfettered or unencumbered freedom.[1] There are many ways to ensure that a client exercises a knowing and free choice to waive the fee limitations. They may provide a description of the prospective client's constitutional right to a limited fee agreement in a separate document to be executed,

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[1]Florida contingent fee clients are already well protected by our Rules of Professional Conduct. The mandatory "statement of client's rights for contingency fees" tells the contingent fee client "You...have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one lawyer you may talk with other lawyers." Our Bar and this Court have already established that a client and lawyer may bargain for their contract rights, and the proposed limitation is an assault on that recognized and approved mandate.

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or conspicuously stated within the fee agreement itself. They may advise the prospective client to consult with independent legal counsel, should they have any questions about their rights. Indeed, a practitioner may arguably take advantage of Rule Regulating the Florida Bar 4-1.5(f)(4)(B)(ii), which contains a mechanism for the judicial approval of a contingency fee agreement in a closed proceeding at the outset of a representation.

The clients should ultimately decide whether or not it is to their benefit to knowingly waive their rights under Article I, Section26, not those who will benefit from preclusion of the waiver and whose interest is opposite to that of injured plaintiffs, the medical industry and its insurers.

Rule Would Deny Right to Chosen Counsel

The key issue is one of education. If the client is educated, made knowledgeable, and understands his/her legal rights, he or she is thereafter armed with all that is necessary to exercise the fundamental right of choice – a policy well established in this state's jurisprudence. The courts of this state have always taken great pains to protect the right of a citizen to counsel of one's own choice. In the civil arena, one usually sees this discussion in the context of attorney disqualification issues. "Disqualification of a party's chosen counsel is an extraordinary remedy and

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should only be resorted to sparingly." *Singer Island, Ltd. v. Budget Constr. Co.*, 714 So.2d 651, 652 (Fla. 4th DCA 1998); *Coral Reef of Key Biscayne Developers, Inc. v. Lloyd's Underwriters at London,* ___So.2d ___ (Fla. 3rd DCA 2005)[2005 WL 1631085]; *Vick v. Bailey,* 777 So.2d 1005, 1007 (Fla. 2d DCA 2000). Motions for disqualification are generally viewed with skepticism because the disqualification of counsel impinges on a party's right to employ a lawyer of choice, and such motions are often interposed for tactical purposes. *Coral Reef of Key Biscayne, supra*; *Alexander v. Tandem Staffing Solutions, Inc.*, 882 So. 2d 607, 609 (Fla. 4th DCA 2004); *Manning v. Waring, Cox, James, Sklar & Allen,* 849 F.2d 222, 224 (6th Cir.1988) (observing that the ability to deny one's opponent the services of capable counsel, is a potent weapon).

While borne out of a different context, the warning of these cases about counsel disqualification as a strategy or tactic resonate with equal force in the context discussed here. Proponents of Article 3 pushed for a constitutional enactment as a way to deprive those injured by medical negligence of the best legal talent available. Proponents sought to preclude claimants from using effective and experienced lawyers by trying to tie lawyers' hands economically. While the people of this state have the absolute right to obtain fee agreements within the parameters of Article I,

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Section 26, they are also absolutely free to employ counsel on terms outside of the newly enacted constitutional provision. It is a subject of free choice and individual rights for clients, and as long as the decisions are made with full knowledge of their legal rights, no criticism should be heard about their decisions.

It is axiomatic that every Florida citizen needs and is entitled to the assistance of counsel in all legal matters, and particularly so in connection with medical negligence actions. "No one, not even the most ardent proponents of contingent fee limitations, seriously challenges the fundamental social utility of contingent fees in our legal system: 'Contingency fees are vital to the vindication of important legal rights in that they enable accident victims and other injured persons to have access to both legal counsel and the courts which would not be otherwise feasible.'" Report on Contingency Fees in Medical Malpractice Litigation, ABA Tort & Trial Insurance Practice Section at 6 (September 20, 2004) quoting Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks, 65 Fordham L. Rev.* 247, 270 (critique of Formal Opinion 94-389). Yet the proposed fee limitation will severely undermine the social utility of the contingency fee representation in medical negligence cases.

A person should be free to engage counsel on those reasonable terms as the citizen deems appropriate. Nothing about Article I, Section 26, Florida Constitution,

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should be deemed a prohibition on that right. Injured victims who may not have the financial wherewithal to hire experienced and highly competent medical malpractice counsel may still employ these lawyers on the traditional contingent fee basis through a knowing, intelligent, and voluntary renunciation of their Article I, Section 26 rights.

The Genesis of American Jurisprudence is Predicated on Free Choice and Thought and Hence, the Right to Waive Privilege is Strongly Imbedded in the Market Place of Goods and Services

The arguments from the physicians and the carriers that provide insurance coverage are both hypocritical and hollow. In the world of healthcare, medical providers and facilities regularly secure waivers from patients and recipients of medical services. In fact, patients regularly waive the right of privacy under federal law ("HIPPA"). At times, a patient is requested to consent to a particular treatment. Consequently, they knowingly and freely waive a right to object.

Florida doctors argue that patients who are endowed with the free will to make life and death decisions about their bodies and health and give informed consent are incapable of understanding the right to enforce or waive particular individual property rights given to them. The same people who have the capacity to understand complex medical procedures and give informed consent are also the same autonomous intelligent people who can understand and give informed consent to a waiver of a

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property right given to them. As a matter of fact, Floridians usually have more information and time to reflect on, consider and decide on a contractual waiver than they do to consent to a complex medical procedure.

Similarly, in the insurance world, insurance carriers regularly enjoy the benefits of waivers. For example, an insured waives the benefits of coverage by failing to cooperate or by failing to timely notify the carrier of a loss. It is common place in the insurance industry for an insured to expressly manifest waiver of certain coverage while completing an insurance application. In fact, waivers of insurance coverage are boilerplate provisions with auto rental agencies.

It is hypocritical, then, for the medical industry and insurance carriers to find waivers in the free market place of legal services to be offensive. It is, however, transparent that proponents of a fee limitation have the heightened sensitivities for contract limitations limited **only** to the lawyers who provide the legal services to the victims of their negligence.

Not only are waivers common place in the areas of medicine and insurance, they are an acceptable result of our jurisprudence. The courts have traditionally accepted waivers even when there are consequential effects on the unwary. The medical association exhibits a unique and unusual interest for the well being of

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consumers of legal services that is not even shared by the courts of this land. In more delicate situations, courts bar rights of litigants by resorting to the doctrine of waiver.

For example, if a litigant fails to raise an affirmative defense in an answer, that defense is deemed waived. If the litigant-consumer has not interposed an objection to the substance of an invoice, any inaccuracies are deemed waived. Similarly, where a litigant fails to timely demand arbitration, the litigant waives access to that forum. These are only a few illustrations exhibiting the various circumstances where waiver of rights and claims have been routinely been accepted in the absence of mutual contractual negotiations.

Consequently, the concept that two adults should not be allowed to freely contract to secure the best legal representation is not foreign to our social fabric. Foreign, however, is the request of the rule proponents in our decentralized market place of goods and services. For these reasons, the court should reject the facade advanced in the petition by the medical association and the insurance industry which stand to benefit the most from a ruling that negates a freedom to contract.

Practical Considerations

The rule proposal ignores some very basic truths about prosecuting a medical negligence case. The first truth is that a medical negligence case often involves a

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claimant or claimants represented by a single lawyer or law firm. Conversely, the defense often includes multiple defendants represented by multiple lawyers or law firms. It is a common sight in the court house and at deposition to see a pack of defense lawyers pitted against a single representative for the plaintiff. The point is not one of sympathy but of economic reality. The plaintiff must fund its litigation – the defendants are funded by the insurance company, and then often in multiples. In a multi defendant case, each medical professional defendant presents multiple experts covering not only their speciality but the specialties of the other defendants. This is due in part to their potential responsibility for another's negligence, but also due in part to the concept of safety in numbers.

Apart from the exceptionally high cost to prosecute a medical negligence case, there is the economic reality of fee reduction. Quite often a plaintiff's lawyer needs to make an adjustment to his/her contractual contingent fee in order to get the client its desired recovery. And this ability to alter the client-lawyer contract would be severely threatened if the rule proposal were adopted. The mandatory reduced fee proposed by the rule would leave little "wiggle" room to get cases settled that might otherwise be settled because the lawyer voluntarily reduced his/her fee. This is a clear example of the rule interfering with the right to contract between the client and

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the lawyer. A fair and reasonable fee is essential to preserve the right of people who suffered injury as a result of medical malpractice. *See attached client letters.*

The proposed fee limitation undermines and weakens the fundamental concept of individual primacy. The proposed fee limitation challenges the very notion that individuals understand their rights and have personal freedom to exercise or waive those rights as they see fit. The proposed fee limitation attacks personal and individual rights such as access to courts, freedom to contract and property rights. The proposed limitation does violence to the accepted and recognized premise that contingent fees are about access to the system or the courts for those without the means to pay a lawyer to represent them. The limitations set forth in the proposed rule would prevent the injured from acquiring adequate representation. The Court must reject the request of the special (and self) interest group in favor of recognized personal constitutional rights.

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For these reasons, the petition should be rejected.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished to: **Stephen H. Grimes, Esq.**, Holland & Knight LLP, 315 South Calhoun Street, Suite 600, Tallahassee, FL 32301 and **John F. Harkness, Jr., Esq.**, Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300 by U.S. Mail on September 29, 2005.

GEOFFREY B. MARKS

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28 de septiembre del 2005

Sus Señorías:

Mi difunta esposa fue víctima de una negligencia médica. Ella falleció por causa de una infección que no fue atendida correctamente después de una cirugía abdominal. Yo fui recomendado a unos abogados muy buenos de habla hispana quienes me ayudaron tremendamente y transaron el caso a mi favor. Ellos cobraron sus honorarios de acuerdo a los requisitos de las leyes del estado de la Florida. Los nuevos honorarios propuestos bajo la petición presentada ante esta Corte son inadecuados y estoy seguro que va a ser muy difícil conseguir buenos abogados que trabajen en estos casos tan difíciles por esas cantidades tan limitadas. Por esa razón me opongo a estos honorarios.

Sinceramente,

Orlando Carratala
1127 S.W. 79th Avenue
Miami, Florida 33144

September 28, 2005

Dear Justices:

My late wife was a victim of medical malpractice. She passed away as a result of an infection that was not properly treated after abdominal surgery. I was referred to very good Spanish-speaking attorneys who helped me a great deal and settled the case in my favor. They charged their fees according to the guidelines of the State of Florida. The new fees proposed under the petition filed before this Court are inadequate and I am sure it will be very difficult to retain good attorneys that work these complex cases for such limited amounts of money. For that reason, I oppose the proposed fee.

Sincerely

Orlando Carratala
1127 SW 79th Avenue
Miami, FL 33144

September 28, 2005

Dear Justices:

My name is Josefina Lindsey. I am the widow of Herman Lindsey. We were victims of medical malpractice in that my husband, Herman, suffered a stroke and eventually died from it. Our lawyers worked very, very hard and matched the defense on all their issues. At the time that the case was settled, my lawyers drastically cut their fees in order to make the settlement happen and to provide me and my family with the money we needed to overcome the financial disaster that resulted from what we believe to be medical malpractice.

Even though my lawyers were charging pursuant to the guidelines set forth in the rules governing the Florida Bar, they cut their fee significantly. I believe that the fee schedules proposed in Amendment 3 and in the proposed Petition are unrealistic. I do not think that victims of medical malpractice can get good representation or knowledgeable lawyers on such a limited fee schedule.

Sincerely,

Josefina Lindsey
10734 S.W. 59th Terrace
Miami, Florida 33173

September 26, 2005

Clerk, the Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Case No. SC05-1150

Dear Justices,

I would like to take this opportunity to express to you that I strongly oppose the Grimes Petition now before the highest court of our State. Approximately three (3) years ago, I lost my best friend, life-long companion, wife and mother of my three children as a result of medical negligence. My wife went to the emergency room of a hospital with chest pain and a heart attack. She was seen by emergency room doctors, cardiologists and surgeons and underwent numerous tests. She was diagnosed with a heart attack. She had three arteries of her heart occluded and nothing was done to treat her condition and she died two days later while being monitored in the hospital.

After grieving the death of my wife, I wanted to seek justice. I met with many lawyers that specialized in medical malpractice cases but unfortunately, they were unable to handle my case because of its complexities, the number of physicians involved and it was thus economically unfeasible. After I almost gave up pursing this matter, I was fortunate to meet with lawyers who despite the difficulty of the case, number of experts that needed to be hired, and the fact that most of the physicians involved in my wife's care did not carry any medical malpractice insurance, agreed to represent us.

Our lawyers did an excellent job and charged attorney's fees pursuant to the guidelines set forth by the Florida Supreme Court. Our lawyers spent over two (2) years and over $50,000.00 in presenting our case. They were opposed by six (6) defense attorneys and they fought every step of the way in order to get me a great result.

If Amendment 3 caps contingency fees and victims of medical malpractice such as myself are not allowed to hire our choice of legal counsel and waive the current fee structure under Amendment 3, then this will prevent people, like me, who cannot afford to pay for legal counsel, from retaining competent, experienced attorneys.

Please do not let the doctors get away with stopping attorneys from taking on cases like ours by making these cases economically unfeasible.

Sincerely,

Miguel Garces

Miguel Garces
13003 SW 51 Street
Miami Fl. 33175

26 de septiembre del 2005

Corte Suprema del Estado de la Florida
500 South Duval Street
Tallahassee, FL 32399-1927

REF: Número de Caso: SC05-1150

Sus Señorías:

Aprovecho esta oportunidad para expresarles que me opongo a la Petición Grimes la cual está ante la Corte más alta de este estado. Hace aproximadamente tres (3) años, perdí a mi mejor amiga, mi compañera, mi esposa y madre de mis tres hijos como resultado de una negligencia médica. Mi esposa fue al salón de urgencias de un hospital con dolores en el pecho y sufriendo un ataque al corazón. Fue atendida por los doctores de urgencias, cardiólogos y cirujanos y le hicieron numerosos exámenes. El diagnóstico fue un ataque cardíaco. Ella tenía tres arterias en el corazón que estaban obstruidas y nada se hizo para corregir esa condición, lo que causó su muerte dos días después mientras estaba en el hospital bajo observación.

Después del luto por la muerte de mi esposa, quise buscar justicia. Me reuní con muchos abogados que se especializan en casos de negligencia médica pero desafortunadamente, ellos no pudieron tomar mi caso por lo complicado que era y el número de doctores involucrados, lo que hacía el caso impracticable económicamente. Después de casi darme por vencido, tuve la fortuna de reunirme con mis abogados quienes, a pesar de las dificultades del caso, el número de peritos que tenían que contratar y que la mayoría de los médicos involucrados en el cuidado de mi esposa no tenían seguro de negligencia médica, acordaron representarnos.

Nuestros abogados hicieron una labor excelente y cobraron sus honorarios de acuerdo a las directivas de la Corte Suprema de la Florida. Ellos pasaron más de dos años e incurrieron más de $50,000.00 en presentar nuestro caso. Tuvieron la oposición de seis (6) abogados y lucharon en todo momento para conseguirme un resultado magnífico.

Si la Enmienda 3 limita los honorarios de los abogados y a las víctimas de negligencia médica como yo no se les permite contratar los consejeros legales que queramos y renunciar a las directivas de honorarios estructuradas bajo la Enmienda 3, se evitará que las personas que no pueden permitirse el lujo de pagar un abogado contraten abogados competentes y experimentados.

Por favor no permitan que los médicos se salgan con la suya e impidan que los abogados tomen casos como el nuestro porque son económicamente impracticables.

Sinceramente,

Miguel Garcés
13003 SW 51st Street
Miami, FL 33175

September 28, 2005

Dear Justices:

My husband and I were victims of medical malpractice. Our newly conceived baby died as a result of the medical negligence of an obstetrician and anesthesiologist. We were involved in very contentious and drawn out proceedings where the anesthesiologist and the obstetrician blamed each other for the death of our child.

We were represented by very experienced medical malpractice lawyers who did a great job for us and charged a fee pursuant to the guidelines set forth by the Supreme Court of Florida. They worked very hard, spared no expenses and went toe to toe with the lawyers for the health care providers in order to get us a great result.

We feel that the rate structure provided by Amendment 3, will severely limit victims like us from acquiring good lawyers and we do not think that we could have gotten the kind of representation that we received on these proposed fee schedules.

Very truly yours,

Isabel Gomez
6 Starling Court
Jackson, NJ 08527

28 de septiembre del 2005

Sus Señorías:

Somos Osvaldo Herrera y Carmen Herrera. Yo, Osvaldo, fui víctima de negligencia médica cuando no me diagnosticaron un cáncer en el pulmón a tiempo. Fuimos recomendados a unos abogados muy buenos de habla hispana quienes nos ayudaron tremendamente y transaron el caso a favor nuestro. Ellos cobraron sus honorarios de acuerdo a los requisitos de las leyes del estado de la Florida. Los honorarios propuestos bajo la petición presentada ante esta Corte son inadecuados y estamos seguros que va a ser muy difícil conseguir buenos abogados que trabajen en estos casos tan difíciles por esas cantidades tan limitadas. Por esa razón nos oponemos a estos honorarios.

Sinceramente,

Osvaldo Herrera
7847 S.W. 105th Place
Miami, Florida 33173

Carmen Herrera
7847 SW 105th Place
Miami, FL 33173

September 28, 2005

Dear Justices:

We are Osvaldo Herrera and Carmen Herrera. I, Osvaldo, was a victim of medical malpractice when a lung cancer was not timely diagnosed. We was referred to very good Spanish-speaking attorneys who were very helpful to us and got the case settled in our favor. They charged their fees according to the guidelines of the State of Florida. The new fees proposed under the petition filed before this Court are inadequate and I am sure it will be very difficult to retain good attorneys that work these complex cases for such limited amounts of money. For that reason, we oppose the proposed fee.

Sincerely,

Osvaldo Herrera
7847 S.W. 105th Place
Miami, Florida 33173

Carmen Herrera
7847 SW 105th Place
Miami, FL 33173