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./

COMMENTS OF STEVEN M. MEYERS AND
IRVIN A. MEYERS TO PROPOSED AMENDMENT

Pursuant to Rule 1-12.1(g) of the rules regulating the Florida Bar, Steven M. Meyers and Irvin A. Meyers submit these comments objecting to the proposed amendment to Rule 4-1.5(f)(4)(B). We respectfully request that this Court reject the proposed rule amendment.

As set out in numerous other commentaries, there are certain facts that simply cannot be refuted by any principled argument. Rather than repeating all of the cogent and honest points made by the other respondents, we wish to emphasize the "real world" ramifications of the proposed amendment. Some of the uncontroverted facts are as follows:

A. The proponents of Amendment 3, and signatories to the proposed to subsection to Rule 4-1.5, are not motivated to protect victims of medical malpractice. As eloquently noted by another respondent, it is nonsensical for anyone to assume that an amendment sponsored by

the Florida Medical Association was intended to give prospective medical malpractice victims more incentive to sue the very members of the Florida Medical Association.

B. Repeated independent studies have found that a very small percentage of medical negligence become subjects of claims or lawsuits.

C. The vast majority of medical malpractice victims cannot afford to hire counsel at a reasonable hourly rate, and

d. Attorneys who represent medical malpractice victims cannot afford to represent the vast majority of medical malpractice victims under the Amendment 3 formula, which is precisely why the Florida Medical Association sponsored that amendment.

What most concerns the undersigned is any belief whatsoever by the members of this Court that plaintiff's attorneys would be able to represent *any* significant amount of medical negligence victims under Amendment 3. The fact is that we cannot. Our experience over a combined fifty-eight years of representing injured people, including medical malpractice victims, is that it is financially prohibitive to represent practically any medical malpractice victim unless the damages exceed $300,000.00, and at that amount only if there are no significant liability issures. We typically spend more than $10,000.00 in expert medical reviews, our time, and paralegal time just to *decline* a medical malpractice claim.

For every medical malpractice case we agree to handle, we decline at least twenty because we believe they are non-meritorious, or more frequently, because the damages simply do not justify the massive financial expenditures and time necessary to properly prosecute a malpractice claim.

We have also learned that in cases involving only one or two defendants, we typically spend close to $50,000.00 and well over 200 hours of time *before the first mediation or significant settlement conference.* In slightly more complex cases, or with more than two defendants, that number - - before mediation- - is typically close to $100,000.00.

If the proposed amendments to Rule 4-1.5 are passed, we will not be left with just fewer malpractice victims able to obtain representation, we will be left with almost no medical malpractice victims able to obtain representation. That will not only deprive catastrophically injured victims of inexcusable medical negligence from the access to our courts guaranteed by our Constitution, but will undoubtally result in increased medical negligence.

WHEREFORE, the undersigned respectfully submits that this Court should reject the proposed amendments to Rule 4-1.5.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 and Stephen H. Grimes, cousel for Petitioners, Holland Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810 on this 29th day of September, 2005.

By:

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