

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

To the Supreme Court of The State of Florida:

I am writing this letter to address a proposed amendment to Rule 4-1.5(f)(4)(b), Rules regulating the Florida Bar, which attempts to add an additional subsection (iii) to the Rule. This letter, in essence, summarizes my personal objections to the amendment.

It appears to me that the proposed amendment to the aforementioned Rule engrafts a misguided interpretation of the provisions of Amendment 3. It is quite apparent that Amendment 3 concerns itself with an injured party's right to receive certain damages in medical liability claims and does not, by its express terms, place a limitation on attorneys fees.

I also feel that the interpretation of Amendment 3 and any of its applications is a substantive legal matter to be addressed through appropriate litigation in the courts of the state. The proposed amendment is, in effect, an attempt to change

substantive law through Rules regulating professional conduct and that, in and of itself, seems to be quite inappropriate.

I further feel that an individual's existing rights under the current Florida Bar Rule to contract with a lawyer of that individual's choice and to waive the existing provisions of rule 4-1.5 should not be changed. If this were to happen, it would implicate an injured party's rights under both the state and federal constitutions.

Most importantly, I believe that the freedom of each citizen of the State of Florida to contract for legal services with a lawyer of his or her choosing must remain inviolate.

My practice of law is limited to the area of Workers Compensation. It appears to me that the proposed amendment to rule 4-1.5(f)(4)(b) is attempting to do the same thing to medical liability claims that the legislature did to the Workers Compensation Act, effective October 1, 2003. The legislature changed the Workers Compensation Law at that time to limit attorneys fees to a percentage of the recovery obtained by an individuals attorney. By taking this action and also limiting further the benefits to which an injured worker is entitled as a result of an accident on the job, the legislature is, in effect, denying an injured worker the right to access to the courts. In essence, attorneys are precluded from a prudent

economic standpoint from representing many injured workers, who come to them for legal representation.

For example, lets say that the insurance company has denied six weeks of temporary disability benefits to an injured worker, who earns minimum wage. If an attorney successfully prosecutes the claim of this injured worker for six weeks of temporary disability benefits, that attorney will have obtained for the injured worker approximately \$1,000.00. Pursuant to the statutory change to the Workers Compensation Act, that attorney would be limited to an attorney fee of \$200.00 (20% of \$1,000.00). In order to be successful in obtaining these benefits, that attorney would have to spend at least ten to twenty hours and possibly more, depending upon the actual facts, prosecuting the claim. Based on these facts, that attorney's hourly fee rate would be \$10.00 to \$20.00. For this amount of money and in view of the costs that would have to be incurred in successfully prosecuting the claim, an attorney could not, from a prudent economical standpoint, represent this injured worker. I seriously doubt that this injured worker, without the help of an attorney, would be successful in prosecuting a claim for these six weeks of temporary disability benefits.

This same reasoning applies to the proposed amendment. Unless the injured individual is able to waive the existing provisions of Rule 4-1.5, that individual

will be “in the same boat” as the injured worker, who is not able to obtain representation to obtain a benefit to which that worker is properly entitled.

For the foregoing reasons, I strongly urge the Supreme Court to reject the proposed amendment.

COKER, MYERS, SCHICKEL,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to John Harkness, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Esquire, Counsel for Petitioner, Holland and Knight, LLP, P. O. Box 810, Tallahassee, Florida 32302-0810, by United States mail this ____ day of September, 2005.

M. WAYNE MYERS, ESQUIRE