

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

COMMENTS OF FLORIDA ATTORNEY MICHELLE M. NIEMEYER

I am writing to object to the petition to amend Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct. Until the Court considers the constitutionality of the fee limitation amendment, the petition is premature.

Florida lawyers must uphold Florida law, and as such are already bound by the dictates of the constitutional amendment. If the amendment is held to be unconstitutional, a rule change now could endure separate and apart from the constitutional amendment. Furthermore, the term “medical liability cases” as proposed is undefined and broad enough to potentially encompass types of representation outside of limited scope of the amendment. For instance, it might be interpreted to include cases related to the payment for medical liabilities, whether in the context of a tort claim or in a purely contractual collections or insurance litigation context.

The Florida courts are fair in their treatment of litigants, whether they be rich or poor, big or small. The fee limitation obtained by referendum last

fall is unjust and will limit the ability of all Floridians to obtain representation for medical malpractice claims, except that lucky few who earn large enough wages that the lost wage aspect of their claim makes the representation economically viable. I venture to say that most lawyers and judges will not be included in that class of potential litigations. It is the duty of the Florida Supreme Court to protect the rights of the citizens of Florida. The Court must fully consider the constitutionality of the fee limitation amendment before moving forward on amending ethical rules applicable to Florida lawyers.

CERTIFICATE OF SERVICE

I hereby certify these comments were served by U.S. Mail this _30th day of September, 2005 to: John F. Harkness, Jr., Executive Director of the Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300, and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, FL 32302.

/signed _____
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