

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 A. SCOTT NOECKER
PETITION TO AMEND RULE 4-1.5(f)(4)(B) OF THE RULES OF
PROFESSIONAL CONDUCT

Please accept this as my thoughts and observations relative to the above-referenced Petition. The various Constitutional infirmities of the Petition present a grave potential to deny medical malpractice litigants access to the Courts.

An Amendment that has the capacity to restrict attorney's fees on even a \$1 million judgment to \$150,000, while placing no financial restrictions whatsoever on the defense, is virtually certain to deny a prospective litigant the counsel of his choosing. Medical negligence cases are complex and costly, often requiring substantial cost expenditures well into six figures, which is dictated by the posture taken by defense counsel and their insurance clients.

With so much at risk, it would seem illogical that anyone for any period of time would be able to place \$150,000 in cost advances at risk for the prospect of a return of something less than that amount.

As a former defense attorney, I would go one step further. I believe the Florida Medical Association backed Petition is nothing more than a thinly veiled

effort to eliminate an entire class of litigants, depriving these less fortunate of their constitutionally protected right to redress. And make no mistake about it. This provision is exclusively about depriving the injured of their individual rights to waive these oppressive provisions. Furthermore, I have seen nothing in support of the Florida Medical Association sponsored Amendment supportive of the position that a plaintiff cannot waive his or her rights under Amendment 3 nor has any plausible explanation been put forth for the contention that citizens do not have the right to waive the protections available to them under other Constitutional provisions but are, in this case, prohibited from doing so when these very citizens are potential medical malpractice claimants. It seems nonsensical that our laws would allow an individual to waive his right to remain silent and his right to a trial by a jury of his peers but not allow a waiver of a provision that would allow him the right to an attorney of his own choosing.

CONCLUSION

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

Dated this 30th day of September, 2005.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 30th day of September, 2005 to John F. Harkness, Jr., Executive Director of The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida 32302.

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