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
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These comments are submitted to the Court pursuant to this Court's order dated June 29, 2005 regarding the petition to amend the Rules Regulating the Florida Bar - Rule 4-1.5(f)(4)(B) relating to contingency fees in personal injury cases:

I am a practicing trial attorney with 30 years of experience in Miami Dade County, Florida. I have litigated medical malpractice cases during all but the first three years of my thirty year practice. I know of no more complicated and difficult area of law than that of medical malpractice due to how technical and complicated the medical malpractice act is. Medical malpractice is an area of the law where a Plaintiff lawyer, on behalf of his client, must pre-suit a claim at some considerably expense before having the right to file a Circuit Court lawsuit. As a result the vast majority of frivolous malpractice claims are eliminated as well as all non-significant medical malpractice claims due to the expense and time involved

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in pursuing these cases.

We all know, and should appreciate, that this amendment was pursued as a devise to punish the trial lawyers. It was concocted by the Florida Medical Association in order to thwart a Client's ability to obtain competent and first rate representation of his or her choice. Nothing in Amendment 3 limits the hospitals and doctors lawyers from billing and charging hundreds upon hundreds of thousands of dollars in giving first rate representation to these same hospitals and doctors thereby creating a lopsided and uneven "playing field" making it extremely difficult if not impossible to obtain any meaningful jury verdict or settlement against the medical industry.

I recently litigated a case against Miami's largest hospital and it's most influential emergency room and anesthesiology group. During the five (5) years that this case proceeded I estimate the various defense counsel billed upwards of $500,000.00, in attorneys fees. They spent another $300,000.00,

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in costs. I alone represented the Plaintiff. During the five (5) years I expended some $76,000.00, in out-of-pocket costs. The case ultimately settled for a little bit under $1 Million Dollars. Had Amendment 3 applied to this case I would have been compensated approximately $140,000.00, while the defense expended $800,000.00 war chest to oppose my Client.

To even suggest that the effects of Amendment 3 are not waive-able borders on absurdity. In our country we are able to waive our right to a jury trial; our 5th Amendment privileges; our right to an Appeal in a death penalty case; and our right to an attorney.

Could you imagine if we promoted constitutional amendments to do the following:

1) Declaring that no hospital can charge more than $80.00 a day;

2) That no pharmaceutical company can charge more than 10% over costs;

3) That no auto mechanic can charge more than $11.00 for a

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tune-up; and

4) That no dentist can charge more than $15.00 per visit.

Those who care about free enterprise and true libertarian values are aghast at the suggestion that the government through the constitution yet, can step in and interfere with the rights of private citizens to contract. To go on to suggest that not only can the government interfere with a private citizens contract rights but can decree that those same citizens don't have the power to waive those rights is laughable.

In the State of Florida the emerging wisdom is to limit future amendments to our Florida Constitution so as to safe guard the citizens from emotionally motivated and ill-thought-out "ground swells" resulting in amendments that fail to reflect the well reasoned wisdom that arise as a result of a seasoned deliberative process. The interpretation of this amendment 3 is far too important to be simply "rubber stamped".

In the past when moves where under foot to limit Plaintiff's attorneys fees (in the past by the Florida legislature) this

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very Court stepped in and decreed that it and it alone had the rule making authority to set reasonable attorney's fees. The result was a downward adjustment in attorney's fees for Plaintiff lawyers from a fee of 40% across the board to the present formula of 40%, 30% and 20%. The practical effect is that the attorney's fees received on a $5 Million Dollar result has dropped some $700,000.00. (From 40% of 5 Million Dollars which equals $2 Million Dollars to 40% of the 1st Million, 30% of the 2nd Million, 20% of the remaining million for a total fee 1.3 Million Dollars). An uneven playing field does not serve the citizens of the State of Florida nor should the ratification of an uneven playing filed be the province of this Supreme Court. How do we accomplish progress and enlightenment in our state, one of the most populated states by permitting a punitive amendment, created by an angry and emotional interest group, disrupt the authority of this Supreme Court and the balance that this Court has established over years of decisions, by establishing a system wherein medically injured moms, dads and

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children are restricted in what they can pay their legal representatives while offering no concomitant limitation whatsoever on what the Defendants, the doctors, the hospitals and the insurance industry can pay their Defense lawyers. How is it unethical for an injured plaintiff to pay his or her attorney that sum of money which this Court has historically decreed to be appropriate while at the same time there be no ethical problem with a multibillion dollar insurance company paying multiple hundreds of thousands of dollars and at times a million dollars or more to the largest defense firms in this state often assigning two, three and four attorneys to steam roller a Plaintiff's claim in order to attempt to financially drive the Plaintiff and his/her lawyer from being able to continue with the litigation. I have had many clients who have given up their case and instructed me to settle, below value, because they simply could not afford to continue with litigation.

What will happen when the insurance industry in the state of

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Florida comes to realize and fully appreciate that the Plaintiff can not possibly spend the money to contend with the defense; not because the Plaintiff's lawyer is unwilling to do so, but rather because the Supreme Court of the State of Florida, in essence, ratified an ill conceived, mean spirited, amendment, the sole purpose of which is to frustrate and limit an injured and damaged class of individuals from being competently represented.

Therefore, I oppose the Petition and request that this Honorable Court deny the Petition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing original and an electronic copy as well as eight copies were sent to the Clerk of the Supreme Court of Florida by mail August 9, 2005 pursuant to the Court's Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13, 2004; and to John Harkness, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee FL 32399-2300 and

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