

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC05-1150

IN RE Petition to Amend Rules)
Regulating the Florida Bar,)
Rule 4-1.5(f)(4)(B) of the Rules)
of Professional Conduct,)
_____)

**COMMENTS OF THE BROWARD COUNTY TRIAL
LAWYERS ASSOCIATION OPPOSING
PROPOSED AMENDMENT TO RULE 4-1.5(F)(4)(B) OF
THE RULES OF PROFESSIONAL CONDUCT**

Broward County Trial Lawyers Association, Inc. (BCTLA) is a group of active and committed attorneys, skilled and experienced in representing injured persons, who are determined to improve and enhance the standards of trial practice, the administration of justice, and the ethics of the profession. As such, the BCTLA is compelled to oppose the thinly-veiled attempt by the Petitioners to benefit members of the Florida Medical Association by restricting the right of injured patients to be represented by competent and experienced counsel of their choice. The petition not only subverts the rule amendment process in order to seek a litigation advantage for those who may be held liable for the damages caused by their medical negligence, but also is constitutionally unsound and unwise.

This Court has already had the benefit of thoughtful comments by numerous individuals, as well as by other voluntary bar associations and the Florida Bar itself, all

opposing the petition. Without repeating those well-founded arguments, the BCTLA adds its voice in opposition to the petition by stressing the following:

1. This Court has recognized the critical role which the contingent fee system provides in allowing injured persons to seek redress in the courts even though they are challenging defendants whose financial resources far exceed their own. Bell v. U.S.B. Acquisition Co., Inc., 734 So.2d 403, 411 (Fla. 1999). Indeed, this Court has observed that the goal of A...encouraging plaintiffs to bring meritorious claims that would not otherwise be economically feasible to bring on a noncontingent fee basis@is consistent with Article I, Section 21 of the Florida Constitution. Bell, 734 So.2d at 411, quoting its earlier opinion in Florida Patient=s Compensation Fund v. Rowe, 472 So.2d 1145, 1149 (Fla. 1985).

2. Moreover, this Court has recognized that attorneys who are willing to devote their time, skill, and resources to pursuing their clients=causes, with a significant risk of nonpayment, should be compensated at a higher rate for undertaking that risk. As then-Justice Grimes pointed out in his concurring opinion in Lane v. Head, 566 So.2d 508, 513 (Fla. 1990), A...without providing an added incentive for lawyers to obtain higher fees, clients with legitimate causes of action (or defenses) may not be able to obtain legal services.@

3. Such policy considerations were no doubt factored in when this Court approved Rule 4-1.5(f) and its contingency fee schedule. It is highly debatable whether

Article 1, Section 26 of the Florida Constitution (adopted as Amendment 3) can be read to justify imposing an additional cap on attorney's fees for the same risk-taking lawyers or **B** worse yet **B** to require restricting a client's right to waive his or her **A**right@ to be represented by only those attorneys who can afford to represent the client at the reduced rate. Those issues, and other constitutional questions which will arise, must be litigated on a case-by-case basis and should not be foreclosed by a rule amendment such as that sought by the Petitioners.

4. The BCTLA joins with and endorses the arguments and reasoning of other organizations and individuals who have submitted comments in opposition to the proposed rule change. Its members respectfully urge this Court to either dismiss or deny the petition for all of the reasons therein expressed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by U.S. Mail this 27th day of September, 2005, to: **JOHN HARKNESS, ESQUIRE**, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and **STEPHEN H. GRIMES, ESQUIRE**, Holland & Knight, LLP, Post Office Box 810, Tallahassee, Florida 32302-0810, Counsel for Petitioners.

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