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 ATTORNEY STEVEN W. WINGO AND OBJECTIONS TO PROPOSED AMENDMENT

A. Introduction:

Pursuant to Rule 1-12.1(g) of the Rules Regulating The Florida Bar, the undersigned counsel submits these comments objecting to the proposed amendment to Rule 4-1.5(f)(4)(B). Many attorneys, individuals, and public interest groups are likely to file detailed substantive arguments objecting to the proposed amendment. The undersigned counsel's desire, however, is to supplement the substantive arguments with practical comment and objection from an attorney working on the front lines to assist injured accident victims in the State of Florida. The Court should deny the petition because it would for all practical purposes end our State's critical right of access to Courts for victims of medical negligence.

B. Comment and Objection:

The undersigned lives and practices in Marion County, Florida, a county

with a population of approximately 300,000, and devotes more than 95% of his practice to representation of accident victims, including victims in both medical negligence and nursing home negligence/abuse cases. While there are approximately 429 members of the Florida Bar residing in Marion County, it is safe to estimate that no more than a dozen of those attorneys are willing to represent victims of medical malpractice on a contingent fee basis. The actual number who handle such claims is likely less. It appears that less than 3% of the attorneys in Marion County, therefore, are even willing to consider taking such cases. The percentage of attorneys willing to represent victims of medical negligence is likely similar throughout other counties in the State of Florida.

There are multiple reasons that a very low percentage of attorneys are willing to consider representing victims of medical negligence, and they are easy to identify: the cases are legally and intellectually complex, require a high level of expertise, require a large time investment without a guarantee of payment, are tremendously expensive, and are typically vigorously defended (even in clear cases of negligence). In my experience, even the least expensive medical malpractice cases require a cost investment by the Plaintiff's attorney in the range of $25,000 to properly prepare the case for trial. Many medical malpractice cases, particularly when multiple defendants are involved, can require cost investments of hundreds of thousands of dollars. An even fewer percentage of attorneys have the financial

resources to handle such cases.

Due to these hurdles, genuine victims of medical negligence already have difficulty finding attorneys to take on their claims for investigation and, when meritorious, to pursue claims on their behalf. Most medical negligence victims do not have the resources to pay the attorney's fees and costs required to pursue such claims. Even under the current ethical guidelines concerning contingent fees, the undersigned has on numerous occasions declined to investigate potentially legitimate medical negligence claims because it was apparent the damages—while real—were not high enough to make pursuit of a claim economically feasible. If a potential client does not appear to have damages in the range of $250,000 or greater, it is financially imprudent for a Plaintiff's attorney to invest the time and costs necessary to investigate and then litigate their claim.

If the proposed amendment to the ethical rule is adopted, the practical effect will likely be that a vast majority of the small percentage of attorneys who now consider representing victims of medical negligence will stop taking them. For financial reasons, the undersigned would stop considering such cases and would also stop taking on claims for nursing home neglect or abuse until there is clarification concerning whether the amendment to the ethical rule applies to such claims. This would not be because of a lack of desire to handle such claims and assist victims of medical negligence, or because such cases are not as profitable as

others, but rather because it would simply be financially impractical to pursue such claims based upon the proposed contingent fee schedule.

There are other important considerations:

- Medical malpractice defendants are not limited in what they can pay their attorneys.
- Medical malpractice defendants are typically represented by some of the finest defense attorneys, making it important that victims of medical negligence can also hire qualified counsel.
- Medical malpractice defendants are not limited in how much they can invest from a cost perspective in defending medical negligence claims.

The citizens of the State of Florida have an important constitutional right to access to our Courts which would be rendered meaningless if they are not able to hire an attorney to assist them, on a contingent fee basis, in complex and expensive claims. It would be unwise to enact an ethical rule which effectively wipes out this important and fundamental right of access to our Courts for an entire class of victims who are often in dire need of the protections by our civil justice system. Both attorneys and judges, as Officers of our Courts, each have a duty to protect the integrity of our civil justice system and make a meaningful judicial forum available for resolution of disputes. The proposed amendment to the ethical rule,

like Amendment 3, is not designed to further the interest of victims of medical negligence victims or to advance ethics by attorneys. The proposed amendment is designed to make it more difficult for medical negligence claimants to pursue claims—regardless of whether they are meritorious. In evaluating the ethical considerations of Amendment 3, the undersigned suggests it would be unethical for us, as members of The Florida Bar and Officers of our Courts, to allow an entire class of injured victims to be abandoned by our civil justice system. That is what will occur if the proposed amendment to the ethical rule is passed.

The proposed amendment should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon John Harkness, General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 and Stephen H. Grimes, Counsel for Petitioners, Holland + Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810 on this the 21st day of July, 2005.

By: _____

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