

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

**COMMENT IN OPPOSITION TO PETITION TO AMEND RULE 4-1.5(f)(4)(B)
OF THE FLORIDA BAR'S RULES OF PROFESSIONAL CONDUCT**

COME NOW C. Steven Yerrid, Esquire; Ralph L. Gonzalez, Esquire; Theresa L. Fiset, Esquire; and Tammy J. Judge, Esquire, individually and collectively as members of the Florida Bar, and hereby file their comments in opposition to the Petition filed with the Florida Supreme Court requesting this Court to amend the Rules of Professional Conduct relating to attorney fees, and state:

1. On June 29, 2005, counsel for the Florida Medical Association's political committee filed their Petition with this Court asking the Court to amend Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct, effectively incorporating the recently enacted Amendment 3 into the Rules Regulating the Florida Bar.

2. The Florida Bar should not define its parameters by something which has not yet been adjudged as Constitutional. The premature petition, if passed, would prohibit lawyers from accepting cases in which their clients choose to waive their constitutional rights.

3. The undersigned strongly oppose this change since it would essentially restrict access to the courts by limiting attorneys' fees on arguably one of the most technical and therefore, expensive claims to prosecute. Since defendants are not limited in their fees to defend these cases, an unbalanced representation exists, thereby effectively denying equal access to the court system.

4. Medical Malpractice victims are entitled to an equitable justice system to seek redress for their injuries, and additional limitations on contingency fee agreements will certainly interfere with that right.

5. Contingency fee agreements allow victims to negotiate with counsel to receive terms of their choice and obtain representation which might not be otherwise feasible. There is nothing which prevents lawyers or clients from negotiating lower rates.

6. Rule 4-1.5 of the Rules Regulating the Florida Bar already requires a reduction in the amount attorneys can receive for recoveries in excess of \$1 Million. There is a further reduction in fee should that recovery exceed \$2 Million.

7. Continued limitations on contingency fees will likely prevent victims from obtaining adequate counsel, which will further reduce the number of meritorious claims, creating a benefit to those who actually commit malpractice.

8. Injured parties seeking redress for wrongdoing bear the expense of litigation without the benefit of insurance to pay for investigation expenses, necessary yet characteristically costly medical experts and additional costs of litigation. Under the current contingent fee scheme, attorneys bear the risks associated with potential recovery and delayed payment. The benefits should not be monitored by those outside the attorney-client relationship, and certainly not influenced by those who receive periodic and regular payment from their client as litigation ensues.

9. With the recent ratification of Amendment 3, there is a strong likelihood many victims of malpractice with meritorious claims will be turned away and thereby left without redress because the restricted recovery no longer outweighs the high costs of litigation.

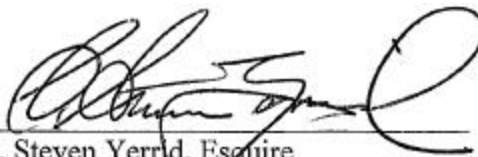
10. Contracts between litigants and their counsel are negotiable and there is nothing unethical in permitting parties to a contract to freely negotiate terms. Florida protects clients from unreasonable fee arrangements by requiring the client to read the “Statement of Rights” and by allowing the client to negotiate the terms of their representation as any reasonable person would when entering into a contract. Moreover, these litigants have a three (3)-day “cooling off” period in which they can withdraw from this representation.

11. Proponents of the Petition attempt to invalidate the voice of the voters with this attempt. When the voters passed Amendment 3, they had the ability to waive their Constitutional rights and could freely contract with counsel. Proponents of this Petition should not be permitted to speak for the voters and presume the voters would have voted in favor of Amendment 3 had they known their Constitutional rights would be stripped in voting to pass the Amendment.

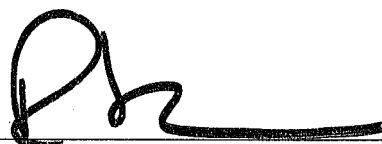
12. The proposed changes would eliminate a citizen’s ability to waive their Constitutional right, a right that is routinely exercised by litigants in other arenas.

13. This petition, if passed, would eliminate a victim’s right to freely contract for legal representation and strip them of their constitutional right. For these and other reasons, the undersigned object to the Petition to Amend Rule 4-1.5(f)(4)(B) of the Florida Bar’s Rules of Professional Conduct.

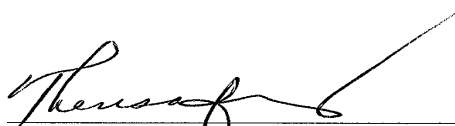
Respectfully submitted,



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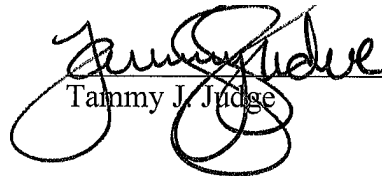
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing original and an electronic copy as well as nine paper (9) copies were sent to the Clerk of the Supreme Court of Florida; a copy was served on the Executive Director of the Florida Bar, John F. Harkness, Jr., at 651 E. Jefferson Street, Tallahassee, Florida, 32399-2300; and a copy was served on Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida, 32302 via mail on this 26th day of September, 2005, pursuant to the Court's Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13, 2004.



Tammy J. Judge