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July 15, 2005

Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

*RE: Petition to Amend Rule 4-1.5(f)(4)(B) of the
Rules of Professional Court
Case Number SC05-1150*

Madam Chief Justice and Associate Justices:

I graduated from Miami Edison Senior High, Yale College (*cum laude* and with *honors* in American Studies) and from Yale Law. I was admitted to practice on November 4, 1966. Starting as an associate with the old Frates, Fay, Floyd & Pearson firm in that same year, and thereafter with my own firms (first Pettingreir & Bailey, later Bailey & Dawes and several variations), I have continuously practiced civil trial law in Florida and Federal Courts for nearly 40 years.

I have served on the Florida Supreme Court/Florida Bar's Bench/Bar Commission and its Implementation Committee. I chaired the Florida Bar's Judicial Administration Selection and Tenure Committee for two years.

I've maintained an "av" rating in Martindale since 1978, and I've been Board Certified in each of Civil Trial and Business since those certifications began. I've served on the faculty at the Bar's Advanced Trial Advocacy Seminar since it began in 1991.

Although I began doing personal injury trials, I quickly moved into corporate and complex commercial trial, which remains the back of my practice. During my career, I've had comparatively letter to do with medical malpractice. I've defended almost as many medical cases as I've prosecuted. Although I concede a plaintiff's side bias, I do not have any particular axe to grind in this arena.

As I recall, the original decision by your predecessors on the Court to place limits on any fees was entirely *sua sponte*. The Court admitted that no significant abuse had been reported, and that no studies had been undertaken. For no revealed reason of claimed significance, the Court just decided one day to place limits on attorney's fees. Indeed the form of limitation (reducing percentages as recoveries went up, in my view), remains backwards. The rules decrease the lawyer's fee for even better results, and increases pressure for the lawyer's motivations to diverge from the client's.

Now you have before you the obviously-insurance-industry-inspired proposed caps on fees in med mal cases. You are all perfectly capable of seeing

that this effort, cloaked with lobbyist-spun rhetoric, purely arises from insurers' desires for even greater profits. All respectable academic studies negate the notion that lawyer's fees have any significant effect on claims or rates. *See, e.g., Medical News Today's* July 7, 2005, report by the *Journal of Empirical Legal Studies*.

It is one thing to engage in demagoguery among the laity. It is entirely another to ask this Court with its proud intellectual tradition to swallow the idea that the public good would be enhanced in any way by this bizarre proposal.

I most earnestly and respectfully urge the Honorable Court not to sully its well-earned reputation by even considering this latest effort by the haves (the perpetrators of malpractice) to take even more from the have-nots (their victims).

Respectfully submitted
Bailey & Dawes, L.C.

By: _____
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