



THE FLORIDA BAR

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REQUEST FOR COMMENTS

To All Section and Division Chairs

Re: Board of Governors Disciplinary Procedure Committee Review of Guidelines for Criteria Involved on Review of Petitions to Exceed Contingency Fee Percentages

The disciplinary procedure committee of the board of governors has been asked to conduct further study of rule 4-1.5(f)(B)(4)(ii) as it relates to requests for departures from the presumed appropriate maximum fee stated in rule 4-1.5(f)(4)(B)(i). In conducting this study, comments from sections and divisions will be helpful.

Rule 4-1.5(f)(4)(B)(i) establishes a fee schedule for certain contingency fee cases and provides that fees in excess of those stated in the rule are:

presumed, unless rebutted, to be clearly excessive . . .

Rule 4-1.5(f)(4)(B)(ii) allows for judicial approval of a fee in excess of the contingency fee schedule stated in 4-1.5(f)(4)(B)(i) and provides:

If any client is unable to obtain an attorney of the client's choice because of the limitations . . . the client may petition the court . . . for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract.

Commentary to this rule provides:

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client upon approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact

that would justify contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b).

Upon a petition by client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract.

This matter has come to attention of the board by reason of a judicial inquiry during oral argument in a previous rule amendment case. As a result of that inquiry the study was begun and a proposal was approved. However, based on comments received concerning that proposal, the board has determined to conduct further study and comments are solicited for that purpose.

It has been suggested that the current language of this rule provides little or no guidance to trial judges concerning the criteria that they are to apply when presented with petitions to approve an upper departure in the contingency fee related litigation.

The next meeting of the disciplinary procedure committee will be on April 7, 2005 in Tallahassee. It is anticipated that the committee will receive a status report at its April 7, 2005 meeting and that the matter will be continued in order to allow for written comments to be received and distributed. Written comments are requested to be sent to Tony Boggs, Legal Division, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300. E-mail submissions are preferred and maybe sent to tboggs@flabar.org.