

LAW OFFICES

AYRES, CLUSTER, CURRY, McCALL & BRIGGS, P. A.

21 NORTHEAST FIRST AVENUE
POST OFFICE BOX 1148
OCALA, FLORIDA 32678

WILLARD AYRES
of Counsel

RANDY R. BRIGGS*
EDWIN C. CLUSTER*
JAMES E. COLLINS
LANDIS V. CURRY, JR.
PATRICK G. GILLIGAN
W. JAMES GOODING III
WAYNE C. McCALL*
DOUGLAS H. OSWALD
MARTY SMITH

November 23, 1988

TELEPHONE (904) 351-2222

FILED
SID J. W. [unclear]

NOV 28 1988

* *Florida Bar Certified Civil Trial Lawyer*

Clerk of the Supreme Court
Tallahassee, Florida 32399-1927

CLERK, SUPREME COURT

By _____ *pl*

Re: Case Number 73,263 (Petition to Amend FRCP 1.442)

Dear Mr. White:

I recently read in the Florida Bar News of the petition filed with the Court by the Civil Procedure Rules Committee regarding Rule 1.442.

I have read the proposed change and would recommend both the adoption of the proposed Rule, and the position of the Committee regarding the unconstitutionality of Florida Statutes 45.061 and 768.79.

As a practicing civil trial lawyer, I am finding that the sanctions of these two statutes are deleterious to the fair resolution of disputes. Because the penalties are too severe, citizens are constructively denied their proper remedies. Those litigants who can best afford to run the risk of the sanctions are using their financial well-being to unfairly intimidate those of lesser means.

The sanction contained in the proposed amended Rule submitted by the Committee is far more consistent with attaining the objective of placing a reasonable penalty upon litigants who unreasonably refuse to settle in the face of an appropriate offer or demand.

As one who deals with the effects of the present statutes on civil litigation, I would recommend adoption of the proposed Rule, and I support the Committee's recommendation that Florida Statutes 45.061 and 768.79 be found unconstitutional for the reasons the Committee has provided.

Very truly yours,

AYRES, CLUSTER, CURRY,
McCALL & BRIGGS, P.A.

By *Randy R. Briggs*
Randy R. Briggs