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FILED
DEC 18 1988
CLERK, SUPREME COURT
By [Signature]
Deputy Clerk

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December 8, 1988

Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, FL 32399-1027

Re: Case No: 73,263
Rule of Civil Procedure 1.442

Dear Honorable Sirs:

I have reviewed the recommendation of the Florida Bar of Civil Rules Committee, that is to say, the work product of the Committee regarding Rule 1.442 Amendment.

I believe that the proposed is a poor amendment to the Rule. The 15% increase or decrease is arbitrary and has no relationship to the practicalities of compelling parties to dispose of cases. Defendants who are insured will not be impressed by a 15% potential increase in the award against them. 15% of \$100,000.00 is only \$15,000.00. On the other hand, 15% reduction in an injured party's recovery after verdict would have a very damaging effect upon the Plaintiff. The Plaintiff will already have had to withstand reductions from comparative negligence, then only to suffer an additional 15% reduction. This Rule is skewed for Defendants and against Plaintiffs.

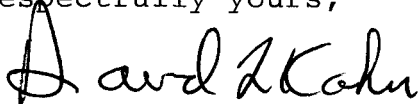
The Rule was supposed to be a compromise between Florida Statutes 45.061, 768.79 and the existing Rule 1.442. No court has yet ruled the aforementioned statutes as unconstitutional, yet this proposed rule amendment totally emasculates the force and effect of those statutes. Those statutes were designed to impose upon the losing party an award of attorney's fees. Attorneys fees are more significant than 15% of a judgment or, for that matter, verdict (the proposed amendment is not clear on this subject). There is no reference whatsoever to the award of attorneys fees in this proposed amendment. It offers little, if anything, in the way of compromise while offering on a platter to the court the carcasses of Florida Statute 45.061 and 768.79.

sent to
[Signature]

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Let those statutes be tested in a case that is ripe for adjudication. Until then, the amendment is a poor substitute and is not worthy of the excellent men and women who labored toward its creation.

Respectfully yours,

A handwritten signature in cursive script that reads "David L. Kahn". The signature is written in dark ink and is positioned above the typed name.

DAVID L. KAHN, ESQUIRE

DLK/ndt