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Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, FL 32399-1927

FILED
SID J. WHITE

DEC 14 1988

CLERK, SUPREME COURT
By _____
Deputy Clerk

RE: Case No. 73,263

Rules of Civil Procedure; proposal to amend Rule 1.442,
Offers of Judgment.

Dear Mr. White,

I note with interest the proposed rule change as reported in the Florida Bar News of November 15th. I am somewhat concerned that this Offer of Judgment Rule does not pertain to Summary Claims Rules which would, in my opinion, alleviate a lot of the "larger" small claims.

Further, despite the Bar's position that Florida Statute 465.061 and 768.79 should be found to be unconstitutional, I have found these two Florida Statutes to be invaluable in the resolution of cases which would otherwise clog the courts with cases really having no business going to trial. It has appeared to me that when you do not have the ability of invoking these two statutes, the attorneys because of ethical requirements will go head to head and draw out a litigation which, for all practical purposes, could be resolved in a matter of an hour or less.

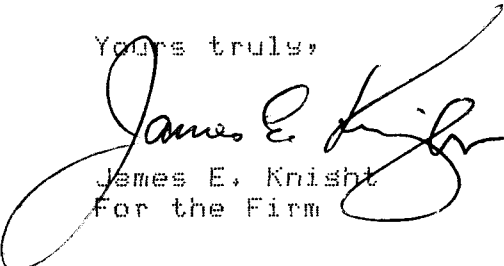
Rule 1.442 as proposed with the percentages, takes away the discretion of the trial Judge to be able to review the parties to a litigation failing to follow discovery rules and in general following the Civil Rules of Procedure as part and parcel of imposing any sanctions under Rule 1.442. I have had experience where defense counsel, as a matter of routine in all cases they defend, fail to comply with discovery rules necessitating thereby motions to compel, orders upon motions to compel, and then subsequent court time for motions to invoke sanctions again based upon failure to provide discovery. Other areas of the rules also have not been

followed and in many cases that I have experience with it appears that the general position of most counsel is "damn the rules drag your feet", the courts won't impose sanctions until there have been many violations. It is my opinion that by shifting the burden of attorneys fees costs and expenses, including investigation expenses and, in fact, all expenses including copying charges and long distance phone calls, to the side who is unreasonably refusing to settle the case or provide discovery or in other ways not following the Rules of Civil Procedure, puts the burden in the proper place and puts all parties to a case in a position of having to properly review rather than to merely glance over pleadings and the facts which might be proved at trial.

I am not completely convinced that proposed rule 1.442 properly incorporates all the distinct advantages of 45.061 and 768.79 F.S., as it is presently offered.

Until those two statutes have been duly incorporated into 1.442, I do not believe that any of the rules or statutes should be changed.

Yours truly,



James E. Knight
For the Firm